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IN THE

Supreme Court of the United States

No. ....

DORIS ROSE,
Respondent, Plaintiff and Appellee Below,

vs.

JACK ROSE,
Petitioner, Defendant and Appellant Below.

PETITION FOR WRIT OF CERTIORARI TO THE OAKLAND COUNTY CIRCUIT COURT OF THE STATE OF MICHIGAN

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States

Petitioner respectfully prays that a writ of certiorari issue to review a judgment of the Oakland County Circuit Court, leave to appeal which judgment has been denied by the Michigan Supreme Court.

OPINIONS BELOW

The decisions, judgments, and orders in the courts below are:—

A. Decision of the Trial Court (Oakland County Circuit Court, Sixth Judicial Circuit of Michigan, Judge James S. Thorburn) in letter form to appoint a guardian ad litem. Dated March 28, 1969 (p. 13).

B. Order of the Michigan Court of Appeals denying leave to appeal the Trial Court's decision of March 28, 1969. Dated April 18, 1969 (p. 14).

C. Order of the Trial Court appointing guardian ad litem. Dated April 23, 1969 (p. 15).

D. Order of the Trial Court modifying its order of April 23, 1969. Dated August 15, 1969 (p. 16).

E. Judgment of divorce of the Trial Court. Dated October 22, 1969. This is the judgment sought to be reviewed (p. 18).

F. Order of the Michigan Court of Appeals denying leave to appeal the Trial Court's orders of April 23 and August 15, 1969. Dated December 22, 1969 and certified December 30, 1969 (p. 22).

G. Order of the Michigan Court of Appeals dismissing appeal of the judgment of divorce of October 22, 1969. Dated July 17, 1970 and certified July 20, 1970 (p. 23).

H. Order of the Michigan Court of Appeals denying rehearing of its order of July 17, 1970. Dated August 26, 1970 and certified September 1, 1970 (p. 25).

I. Order of the Michigan Court of Appeals denying rehearing of its order of August 26, 1970. Dated January 7, 1971 (p. 27).

J. Order of the Michigan Supreme Court denying leave to appeal the Court of Appeals' order of January 7, 1971. Dated March 16, 1971 and certified March 17, 1971 (p. 29).

Copies of these decisions, judgments and orders are attached in the Appendix and identified with matching letters.

JUDISDICTION

The order of the Michigan Supreme Court denying leave to appeal the Michigan Court of Appeals' order of January 7, 1971, denying rehearing of its order of August 26, 1970, denying rehearing of its order of July 17, 1970, dismissing the appeal of the Trial Court's judgment of divorce of October 22, 1969, review of which is sought, is ~~dated March 16, 1971~~.

28 U.S.C. Sec. 1257(3) is believed to confer jurisdiction on this Court to review the judgment in question by writ of certiorari.

QUESTIONS PRESENTED FOR REVIEW

1. May a person of full age and sound mind defend a civil action in person in a state which provides by statute that "Every person of full age and sound mind, may prosecute or defend civil actions in any court by an attorney, or may at his election prosecute or defend civil actions in person."[1]

2. Is a person permitted to defend a civil action in person when an attorney has been appointed for him in

such case in a state which provides by statute that "No person shall be permitted to prosecute or defend any civil action in person, when he has an attorney in such case."?

3. Is a suitor afforded due process where he is denied his constitutional right to defend his suit in his own proper person?

4. Where one of the adversaries is removed from an adversary proceeding, can there still remain an adversary proceeding?

5. How may an individual protect himself from a judge who insists on protecting the individual from himself?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

(a) UNITED STATES CONSTITUTION. Amendment XIV, Sec. 1:

> ". . . nor shall any State deprive any person of life, liberty, or property, without due process of law; . . ."

(b) MICHIGAN CONSTITUTION OF 1963. Art. I, Sec. 13:

> "A suitor in any court of this State has the right to prosecute or defend his suit, either in his own proper person or by an attorney.

(c) MICHIGAN STATUTE. Revised Judicature Act of 1961. Sec. 1430; Mich. Compiled Laws Ann. 600.1430; Mich. Stat. Ann. 27A.1430:

APPEARANCE IN COURT BY ATTORNEY OR IN PERSON; EXCEPTION

Every person of full age and sound mind may prosecute or defend civil actions in any court by an attorney, or may, at his election, prosecute or defend civil actions in person. No person shall be permitted to prosecute or defend any civil action in person, when he has an attorney in such case.

STATEMENT OF THE CASE

Petitioner was loath to represent himself when the third successive divorce action was brought against him, but he had no choice (please see Appendix K, p. 31).

Without benefit of a sanity inquest—with no more justification than that the Court was "of the opinion that a guardian ad litem should be appointed to protect the interests of the defendant" (please see Appendix D, p. 16) —above the strenuous protests of the defendant, Judge Thorburn appointed an attorney-guardian for the petitioner, Mr. Steven N. Andrews.

Petitioner sought leave to appeal the order of appointment to the Michigan Court of Appeals and ceased defending himself in the Trial Court. The Court of Appeals twice denied petitioner's application for leave to appeal the order of appointment (please see Appendices B and F, p. 14 and p. 22). In the meantime, fearful of ratifying the appointment, petitioner refused to cooperate with his court appointed attorney-guardian (please see Appendix L, p. 33).

The "defense" of the divorce action was taken over by Mr. Andrews— an unwelcome attorney for an unwilling and uncooperative client. Within a few months after petitioner had been thus removed from his own litigation, a judgment of divorce was signed by Judge Thorburn (please see Appendix E, p. 18) awarding *inter alia* $20,000 to Mr. Andrews and $85,000 to Mr. Ivan E. Barris, counsel (among several) for petitioner's wife. So far petitioner has paid out over $200,000 in attorney fees[5] alone trying to preserve his marriage.

Petitioner sought in vain to find an attorney to take an appeal. No attorney would risk incurring Judge Thorburn's disfavor. Petitioner does not blame these attorneys for their fear of Judge Thorburn; petitioner is himself afraid of Judge Thorburn. Petitioner has not been without legal counsel, but in order to obtain it he has promised not to reveal the names of his counselors. Petitioner attempted to appeal the judgment of divorce to the Michigan Court of Appeals and to the Michigan Supreme Court. Both Courts have refused to hear an appeal (please see Appendices G and J, p. 23 and p. 29).

Please see the *Statement of Facts* of Appendix M for a further statement of the case (p. 35).

MANNER OF RAISING FEDERAL QUESTIONS SOUGHT TO BE REVIEWED

Petitioner's every application for leave to appeal has been grounded exclusively in due process (please see Appendix M, p. 39, for example).

Petitioner has struggled at length to decide to which court the requested writ of certiorari should be addressed. While he is supposed to have a right to an appeal to the Michigan Court of Appeals, he does not in fact have such a right. His appeal was dismissed for no reason that is even colorably valid or justifiable. The order of dismissal refers to a motion to dismiss the appeal (please see Appendix G, p. 23). But there was no such motion! The order goes on to say that the appeal is dismissed "for the reason that appealant (sic) failed to file the full transcript of hearings in the trial court, or in the alternative, to move in the trial court for an order that less than the full transcript be filed, pursuant to GCR 1963, 812.2(a)." But appellant did file the full transcript of hearings in the Trial Court! And even if he hadn't, it still would not have constituted a non-compliance with GCR 1963, 812.2(a)! In fact the order of dismissal itself does not state that there was any non-compliance with any court rule.

The Court of Appeals simply did not want to hear the appeal. Unable to find any valid reason to dismiss the appeal, it proceeded on the pretext of an invalid-reason.

It is petitioner's belief, therefore, that the Oakland County Circuit Court is the highest court of Michigan in which a decision could be had. If petitioner has erred in his selection, he respectfully asks this Honorable Court to address the requested writ of certiorari either to the Michigan Court of Appeals or to the Michigan Supreme Court whichever it deems proper.

Appeal of the judgment, review of which is sought, is still pending in the Michigan Court of Appeals unbeknown to Judge Thorburn. It will pend there forever, no doubt.

ARGUMENT

The answer to the first four questions presented for review in this petition are self-evident to everyone. They are self-evident to Judge Thorburn. He acknowledged that the appointment of an attorney-guardian was "unlawful" (please see Appendix N, p. 40). What could petitioner say to Judge Thorburn after that acknowledgement? Could he say, "Judge Thorburn, what you are doing here is unlawful", after Judge Thorburn had already informed petitioner that he didn't give a damn whether it was unlawful or not? At one time Judge Thorburn insisted that there was case law to support his order of appointment (please see Appendix O, p. 42) however he has refused to cite the cases. And a diligent search on the part of petitioner and his counsel has failed to disclose any cases.

The answers are also self-evident to Mr. Barris, counsel for petitioner's wife. He moved the Trial Court to vacate the order of appointment arguing that "if the defendant wishes to exercise his constitutional right to appear as his own counsel, this Honorable Court should allow him to do so" (please see Appendix P, p. 44).

So are the answers self-evident to Mr. Andrews, attorney-guardian for petitioner. At the conclusion of the proceedings held at the end of September, 1969, and termed a "trial" by Judge Thorburn, Mr. Andrews acknowledged that petitioner refused to cooperate with him (please see Appendix N, p. 40). Surely Mr. Andrews does not sincerely believe that he can successfully represent an uncooperative litigant.

The answers are also self-evident to the judges of the Michigan Court of Appeals and the Michigan Supreme

Court. That is why they have refused to hear an appeal. They know that the judgment of divorce will have to be vacated and their fraternity brothers will have to return the money if an appeal is heard on the merits.

Petitioner does not know the answer to the fifth and last question presented for review in this petition. Judge Thorburn's words of April 23, 1969 still send chills down petitioner's spine.—"The only conclusion I can reach is that you need protection from yourself" (please see Appendix O, p. 41). Petitioner tried to protect himself by exercising his constitutional right to defend his suit in his own proper person. Judge Thorburn protected petitioner from himself by denying petitioner his constitutional right to defend his suit in his own proper person. What is the difference between protecting an individual from himself and denying an individual his constitutional rights? Was Judge Thorburn also protecting petitioner's wife from herself when he urged her to divorce petitioner (please see Appendix Q, p. 45)? What dire fate would have befallen the parties if Judge Thorburn had not been there to protect them from themselves? A reconciliation perhaps? A family?

Can freedom of choice, individual liberty, or self-determination exist in a state which is empowered to protect the individual from himself? Doesn't the theory of individualism lie at the heart of the American political, economic, and judicial systems? Isn't that theory subverted by a doctrine which authorizes the state to protect the individual from himself?

Petitioner cannot help thinking of George Orwell's novel *1984*. The Thought Police were only protecting poor Winston Smith from himself when they subjected him to the consumate horror of room 101 of the Ministry of Love. Ultimately, they succeeded in making him over in their own image; they "cured" him of his individualism. In the end "he loved Big Brother". Is Judge Thorburn trying to make petitioner over in his image? Petitioner does not want to be like Judge Thorburn! He would rather be dead! Nor does petitioner believe that Judge Thorburn is protecting anyone's interests but his own. Petitioner has compelling evidence of a corrupt agreement between Judge Thorburn and Mr. Barris to bring and sustain unfounded litigation against petitioner repeatedly for the purpose of generating attorney fees, portions of which, of course, are paid to Judge Thorburn. Petitioner has offered his evidence formally to the Oakland County Circuit Court, the Wayne County Circuit Court, the Michigan Court of Appeals, the Michigan Supreme Court, the Supreme Court Administrator, the Michigan Judicial Tenure Commission, the State Bar of Michigan, and the Oakland County Prosecuting Attorney. Each agency has refused to receive the evidence. No one in the Michigan judiciary wants to know anything about Judge Thorburn's corruption!

How may petitioner protect himself from a judge who insists on protecting petitioner from himself? He desperately hopes that this petition is itself the answer to this question. If this Honorable Court denies the writ of certiorari requested, then there is no answer. In that event heaven help us all, for in the words of Mr. Chief Justice Warren E. Burger, "A sense of confidence in the courts is essential to maintain the fabric of ordered liberty for a free people." Please see the *Argument* of Appendix M for further argument (p. 37).

RELIEF SOUGHT

Petitioner entreats this Honorable Court to review the subject judgment.

Respectfully submitted,

Jack Rose
23999 West Ten Mile Road, Suite A
Southfield, Michigan 48075
352-0952

Dated: May 4, 1971.

APPENDIX A

DECISION OF TRIAL COURT TO APPOINT A GUARDIAN AD LITEM

SIXTH JUDICIAL CIRCUIT OF MICHIGAN
Pontiac, Michigan 48053

March 28, 1969

Mr. Ivan E. Barris
2066 Penobscot Building
Detroit, Michigan 48226

Mr. Jack Rose
6186 W. Outer Drive.
Detroit, Michigan 48235

Rose v. Rose, Nos. 09276, 22744 and 68-47753

Gentlemen:

I will render my decision on the appointment of a guardian ad litem, and the reasons for determining the necessity of the appointment, and the name of the guardian ad litem, on Wednesday, April 23, 1969. I shall file a praecipe on the matter on my own motion for 9 o'clock that morning.

Sincerely,

James S. Thorburn
Circuit Judge

JST:nm

APPENDIX B

ORDER OF MICHIGAN COURT OF APPEALS DENYING LEAVE TO APPEAL

At a session of the Court of Appeals of the State of Michigan, held at the Court of Appeals in the City of Lansing, on the 18th day of April in the year of our Lord one thousand nine hundred and sixty-nine.

Present the Honorable Robert J. Danhof, Presiding Judge; Timothy C. Quinn, Louis D. McGregor, Judges.

Doris Rose
Plaintiff-Appellee
v.
Jack Rose
Defendant-Appellant
L.C. 68-47753

No. 7215

In this cause an application for leave and a motion for immediate consideration is filed by defendant-appellant, and an answer in opposition thereto having been filed, and due consideration thereof having been had by the Court.

It is ordered that the motion for immediate consideration be, and the same is hereby granted.

It is further ordered that the application for leave to appeal be, and the same is hereby denied for lack of merit in the grounds presented.

(Clerk's certification of April 18, 1969)

APPENDIX C

STATE OF MICHIGAN—In the Circuit Court for the County of Oakland

Doris Wertheimer Rose, Plaintiff, v. Jack Rose, Defendant.	No. 9276 22744 68-47753

ORDER APPOINTING GUARDIAN AD LITEM

At a session of said Court held in the Court House in Pontiac, Michigan, on April 23, 1969.

Present: The Honorable James S. Thorburn, Circuit Judge.

The plaintiff having filed a Petition for Appointment of Guardian Ad Litem for the Defendant, the Court on its own motion bringing on for hearing the subject matter of said guardian ad litem, oral argument having been heard, the Court being fully advised in the premises and being satisfied from a review of the files and records of this cause that the defendant is incompetent to properly represent himself in this particular cause.

Now, therefore,

It is hereby ordered that Fred N. Searl of 950 Union Bank Building, Grand Rapids, Michigan 49502, be, and hereby is, appointed Guardian Ad Litem of the defendant, Jack Rose, during the pendency of this cause, or until further order of this Court.

James S. Thorburn
Circuit Judge

Ivan E. Barris
Attorney for Plaintiff
2066 Penobscot Building
Detroit, Michigan 48226
WO 2-8210

APPENDIX D

STATE OF MICHIGAN—In the Circuit Court for the County of Oakland

Doris Wertheimer Rose,
Plaintiff,
v.
Jack Rose,
Defendant.

Nos. 9276
22744
68-47753

ORDER WITHDRAWING NOMINATION OF FRED SEARL AS GUARDIAN AD LITEM, ORDER APPOINTING STEVEN N. ANDREWS AS GUARDIAN AD LITEM, AND ORDER DENYING PLAINTIFF'S MOTION TO WITHDARW ORDER APPOINTING GUARDIAN AD LITEM

At a session of said court held in the Courthouse in the City of Pontiac, Michigan, on August 15, 1969.

Present: Honorable James S. Thorburn, Circuit Judge.

The plaintiff having filed a motion to withdraw an earlier order appointing a guardian ad litem for the defendant, the court being of the opinion that said order appointing a guardian ad litem should not be withdrawn, and the court being advised that the originally nominated guardian ad litem, Mr. Fred Searl, is unable because of health reasons to enter into his duties as guardian ad litem, and the court being of the opinion that a guardian ad litem should be appointed to protect the interests of the defendant and the court having decided to appoint one Steven N. Andrews as Guardian Ad Litem;

It is hereby ordered that the nomination of Fred Searl as Guardian Ad Litem for the defendant be and hereby is withdrawn;

It is further ordered that Steven N. Andrews be and hereby is appointed Guardian Ad Litem for the defendant;

It is further ordered that the plaintiff's motion to withdraw order appointing guardian ad litem for the defendant be and hereby is denied.

Clark J. Adams,
Circuit Judge
For James S. Thorburn,
Circuit Judge.

Approved as to form only:

Ivan E. Barris
Attorney for Plaintiff
2066 Penobscot Building
Detroit, Michigan 48226
962-8210

Steven N. Andrews
Guardian Ad Litem for the
Defendant
14 E. Fourteen Mile Road
Clawson, Michigan 48017

APPENDIX E

STATE OF MICHIGAN—In the Circuit Court for the County of Oakland

Doris Wertheimer Rose, Plaintiff, v. Jack Rose, Defendant.	Nos. 9276 22744 68-47753

JUDGMENT OF DIVORCE

At a session of said Court held in the Court house in the City of Pontiac, County of Oakland, Michigan, on October 22, 1969.

Present: The Honorable James S. Thorburn, Circuit Judge.

The plaintiff having filed a Complaint for Absolute Divorce and two Supplemental Complaints for Absolute Divorce, the defendant having filed Answer thereto, testimony having been taken and the Court being of the opinion that the plaintiff has established that the defendant was guilty of acts of extreme and repeated cruelty and non-support;

Now, therefore, on motion of Ivan E. Barris, attorney for the plaintiff;

Divorce

It is hereby ordered, and this Court, by virtue of the authority therein vested and pursuant to the statutes in such case made and provided, does order and adjudge that the marriage between the plaintiff Doris Wertheimer Rose and the defendant Jack Rose be dissolved, and a Judgment of Divorce is hereby awarded to Doris Wertheimer Rose which said divorce shall be effective upon the entry of this Judgment of Divorce.

Alimony

It is further ordered and adjudged that the plaintiff shall have no alimony and that alimony shall be forever barred.

Property Settlement

It is further ordered and adjudged that the defendant shall pay forthwith and simultaneously with the entry of this Judgment of Divorce the sum of Six Hundred Fifty Thousand ($650,000.00) Dollars to the plaintiff.

It is further ordered and adjudged that to implement the payment of the above-awarded sum of money all of the processes available for collection in an action at law, not limited to but including writs of garnishment, execution and attachment, shall issue as required; and to further implement the payment of the above-awarded sum of money the Court will continue in full force and effect the Injunction against the transfer, sale or alienation of assets by the defendant, and, accordingly, until further order of this Court the defendant shall be, and hereby is, enjoined and restrained from concealing, selling, assigning, transferring, conveying, surrendering, waiving, relinquishing, mortgaging, pledging, hypothecating, leasing, alienating encumbering or granting options with respect to any of his business interests, real property, securities, stocks, options, safe deposit boxes, funds on deposit in brokerage accounts, savings accounts, commercial accounts, automobiles or any of his other assets, real or personal, tangible or intangible, except in the usual course of business.

It is further ordered and adjudged that this Court will keep jurisdiction of all property within its jurisdiction for a period of sixty (60) days in the event there is a request or petition by plaintiff for receivership, collection or application of assets or foreclosure of liens existing hereto on all assets of the defendant, it being further the order of this Court that there shall be a lien upon all assets of the defendant to guaranty and insure payment by him of the aforesaid Six Hundred Fifty Thousand ($650,000.00) Dollars to the plaintiff.

It is further ordered and adjudged that each of the parties will keep as their sole and separate assets all of the tangible personal property now in his or her possession.

It is further ordered and adjudged that other than hereinabove provided the plaintiff shall have no claim upon any assets or property of the defendant.

Statutory Insurance Clause

It is further ordered and adjudged that any interest which either of the parties hereto may now have or may heretofore have had in any of the insurance contracts or policies of the other party shall be, and the same hereby is and are, extinguished, and the parties hereto shall in the future hold all such insurance free and clear of any right or interest which the other party now has or may heretofore have had therein or thereto by virtue of being the beneficiary, the contingent beneficiary or otherwise.

Dower

It is further ordered and adjudged, that the above division of property shall be in lieu of any claim and dower interest of any kind and nature that the plaintiff has had or will have against the property ever owned, now held or hereafter acquired by the defendant.

Attorney and Guardian Ad Litem Fees

It is further ordered and adjudged that the defendant forthwith and simultaneously with the entry of this Judgment of Divorce shall pay to Ivan E. Barris, attorney for the plaintiff, an attorney fee in the sum of Eighty-Five Thousand ($85,000.00) Dollars.

It is further ordered and adjudged that the defendant shall forthwith and simultaneously with the entry of this Judgment of Divorce pay to Steven N. Andrews, guardian ad litem, the sum of Twenty Thousand, One Hundred One and 20/100 ($20,101.20) Dollars as fees as guardian ad litem, and as an attorney for the guardian ad litem, i.e., commonly called fees for extraordinary service.

It is further ordered and adjudged that in order to insure and implement payment of the aforesaid Eighty-Five Thousand ($85,000.00) Dollar attorney fee to counsel for the plaintiff and the Twenty Thousand, One Hundred one and 20/100 ($20,101.20) Dollar fee to the guardian ad litem, the Court, as aforesaid, will continue in effect the Injunction against the transfer, sale or alienation of assets and will keep jurisdiction of all attorney and guardian fee matters within its jurisdiction for a period of sixty (60) days in the event there is a request or petition by plaintiff's counsel or the guardian ad litem for receivership, collection or application of assets or foreclosure of liens existing hereto on all assets of the defendant, it being further the order of this Court that counsel for the plaintiff and the guardian ad litem shall have a lien on all the assets of the defendant to guaranty payment of their respective fees.

James S. Thorburn,
Circuit Judge.

IVAN E. BARRIS
Attorney for Plaintiff
2066 Penobscott Building
Detroit, Michigan 48226
WO 2-8210

APPENDIX F

ORDER OF MICHIGAN COURT OF APPEALS DENYING LEAVE TO APPEAL

◆

At a Session of the Court of Appeals of the State of Michigan, Held at the Court of Appeals in the City of Lansing, on the 22nd day of December, in the year of our Lord one thousand nine hundred and sixty-nine.

Present the Honorable Robert J. Danhof, Presiding Judge; Timothy C. Quinn, Louis D. McGregor, Judges.

Doris Rose,
Plaintiff-Appellee
v.
Jack Rose
Defendant-Appellant
No. 8593

In this cause an application for leave to Appeal from an interlocutory order appointing a guardian ad litem and a motion for Stay of Proceedings are filed, and nothing in opposition thereto having been filed, and due consideration thereof having been had by the Court;

It is ordered that the motion for Stay of Proceedings be, and the same is hereby denied.

It is further ordered that the application for Leave to Appeal be, and the same is hereby dismissed for the reason that there is presently pending in this Court an appeal as of right by the appellant from the final judgment of divorce entered on October 22, 1969. On that appeal the appellant is entitled to raise any questions involving the interlocutory order appointing a guardian ad litem.

(Clerk's certification of December 30, 1969)

APPENDIX G

ORDER OF MICHIGAN COURT OF APPEALS DISMISSING APPEAL

At a Session of the Court of Appeals of the State of Michigan, Held at the Court of Appeals in the City of Lansing, on the 17th day of July, in the year of our Lord one thousand nine hundred and seventy.

Present the Honorable Robert J. Danhof, Presiding Judge; Timothy C. Quinn, Louis D. McGregor, Judges.

National Bank of Detroit, a National Banking Association,
Plaintiff-Appellee,
v.
Jack Rose,
Defendant-Appellant,
Doris Wertheimer Rose, Ivan E. Barris, and Steven N. Andrews,
Defendants-Appellees.
L.C. No. 144 270

No. 8866

Doris Wertheimer Rose,
Plaintiff-Appellee,
v.
Jack Rose,
Defendant-Appellant.
L.C. No. 68-47753

No. 8562

In these causes a motion to dismiss the appeal is filed, and an answer in oppostion thereto having been filed, and due consideration thereof having been had by the Court, It is ordered that these appeals be, and they are hereby dismissed, for the reason that appeallant (sic) failed to file the full transcript of hearings in the trial court, or in the alternative, to move in the trial court for an order that less than the full transcript be filed, pursuant to GCR 1963, 812.2(a).

It is further ordered that the stay of proceedings entered and the bond set by this Court on January 30, 1970, be and they are hereby set aside.

(Clerk's certification of July 20, 1970)

APPENDIX H

ORDER OF MICHIGAN COURT OF APPEALS DENYING REHEARING

AMENDED ORDER

At a session of the Court of Appeals of the State of Michigan, held at the Court of Appeals in the City of Lansing, on the 26th day of August, in the year of our Lord one thousand nine hundred and seventy.

Present the Honorable Robert J. Danhof, Presiding Judge; Louis D. McGregor, Timothy C. Quinn, Judges.

Doris Wertheimer Rose,
Plaintiff-Appellee,
v.
Jack Rose,
Defendant-Appellant.
No. 8562

National Bank of Detroit,
Plaintiff-Appellee,
v.
Jack Rose,
Defendant-Appellant,
and
Doris Wertheimer Rose, et al.,
Defendants-Appellees.
No. 8866

In these causes appellant has filed an application for rehearing of this Court's order dismissing these appeals and a motion for disqualification of certain judges and for a full hearing thereon, and appellee has filed a motion for clarification of the order dismissing these appeals, and answers in opposition to the respective motions having been filed and due consideration thereof having been had by the Court.

It is ordered that the application for rehearing be and the same is hereby denied.

It is further ordered that the motion for disqualification and for full hearing thereon be and the same is hereby denied.

It is further ordered that the motion for clarification be and the same is hereby granted.

It is further ordered that this Court's order dated January 30, 1970 and modified on June 9, 1970 shall remain in full force and effect until the judgment of divorce is satisfied in toto as to the interest of Doris Wertheimer Rose and Ivan E. Barris.

Judge Quinn dissents from the order granting motion for clarification.

State of Michigan—ss.

I, Ronald L. Dzierbicki, Clerk of the Court of Appeals of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original; and that it is a true transcript therefrom, and the whole of said original order.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court of Appeals at Lansing, this 1st day of September, in the year of our Lord one thousand nine hundred and seventy.

Ronald L. Dzierbicki,
Clerk.

APPENDIX I

ORDER OF MICHIGAN COURT OF APPEALS DENYING REHEARING

At a session of the Court of Appeals of the State of Michigan, held at the Court of Appeals in the City of Lansing, on the 7th day of January, in the year of our Lord one thousand nine hundred and seventy-one.

Present the Honorable Robert J. Danhof, Presiding Judge; Louis D. McGregor, Timothy C. Quinn, Judges.

Doris W. Rose,
Plaintiff-Appellee,
v.
Jack Rose,
Defendant-Appellant,
L.C. No. 68-47753

File No. 8562

National Bank of Detroit, a national banking corporation,
Plaintiff-Appellee,
v.
Jack Rose,
Defendant-Appellant,
and
Doris Wertheimer Rose, Ivan E. Barris and Steven N. Andrews,
Defendants-Appellees.
L.C. No. 68-47753 (sic)

File No. 8866

In these causes appellant has filed an application for rehearing of this Court's order dated August 26, 1970, and nothing in opposition thereto having been filed, and due consideration thereof having been had by the Court;

It is ordered that the application for rehearing be, and the same is hereby denied.

State of Michigan—ss.

I, Ronald L. Dzierbicki, Clerk of the Court of Appeals of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court of Appeals at Lansing, this 7th day of January, in the year of our Lord one thousand nine hundred and seventy-one.

Ronald L. Dzierbicki,
Clerk.

APPENDIX J

ORDER OF MICHIGAN SUPREME COURT DENYING LEAVE TO APPEAL

At a session of the Supreme Court of the State of Michigan, held at the Supreme Court Room, in the City of Lansing, on the 16th day of March in the year of our Lord one thousand nine hundred and seventy-one.

Present the Honorable Thomas M. Kavanagh, Chief Justice; Eugene F. Black, Paul L. Adams, Thomas E. Brennan, Thomas G. Kavanagh, John B. Swainson, G. Mennen Williams, Associate Justices.

National Bank of Detroit, a National Banking Association,
Plaintiff-Appellee,
v. 53,044
Jack Rose,
Defendant-Appellant,
and
Doris Wertheimer Rose, Ivan E. Barris, and Steven N. Andrews,
Defendants-Appellees.

- - - - - - - - - - - -

Doris Wertheimer Rose,
Plaintiff-Appellee,
v. 53,054 (sic)
Jack Rose,
Defendant-Appellant.

On order of the Court, the application in pro per for leave to appeal is considered, and the same is hereby denied, for the reasons that defendant and appellant has failed to persuade the Court that he has a meritorious basis for appeal or that the determination of the Court of Appeals was clearly erroneous.

State of Michigan—ss.

I, Donald F. Winters, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 17th day of March in the year of our Lord one thousand nine hundred and seventy-one.

Donald F. Winters,
Clerk.

APPENDIX K

LETTER FROM PETITIONER TO STATE BAR OF MICHIGAN

Jack Rose
6186 W. Outer Drive
Detroit, Michigan

October 12, 1968

Mr. David J. Ohlgren
State Bar of Michigan
1414 Dime Building
Detroit, Michigan

Dear Mr. Ohlgren:

This letter will bring you up to date on my complaint against Oakland County Circuit Judge James S. Thorburn. You will recall our last conversation in which I revealed to you that the third divorce case had vexatiously been brought against me. Again as a result of a fraudulent certification the case has been assigned to Judge Thorburn. In accordance with our conversation I made a motion to have Judge Thorburn disqualified. The motion was denied by Judge William R. Beasley, although there never was a hearing. Judge Thorburn has continued his extortion and racketeering by awarding a $20,000 attorney fee and $625 per week temporary alimony.

Mr. Ohlgren, I am in desperate need of advice from the State Bar on a question of ethics. I must learn if it would be ethical for me to retain an attorney in this matter. If this were an ordinary adversary proceeding before an honest judge, there would be no question about it. I would retain counsel to present my side of a controversy to a judge who was trying sincerely to dispense justice. In my case this is impossible; I can not retain an attorney to represent me before Judge Thorburn. I can only retain an attorney to *influence* Judge Thorburn—to bribe him. As a matter of fact I have already done this in the past. When I retained Fred Buesser in the second action, it was not for representation, it was for the purpose of influencing Judge Thorburn. My intention was clearly conveyed to Fred Buesser. It is my feeling that I was morally wrong to do this. I have rationalized my action by telling myself that I never bribed anyone, I was only a victim of extortion. However, I can't honestly say that I can distinguish bribery from extortion. How much coercive force must an official bring to bear before a payment can be justified as extortion?

Last fall the newspapers contained accounts of the investigations by Judge Thorburn while acting in the capacity of a one man grand jury. I read that a land developer had been indicted for bribing a zoning board official. As I recall the payment was allegedly made by the developer's attorney. Suppose I retain counsel, and suppose a future grand jury were to discover that my attorney had bribed Judge Thorburn. Would I not be subject to indictment for bribery? How could I defend myself against such a charge? What would happen to me if I testified truthfully that I hired my attorney only for the purpose of influencing the judge?

Do you feel as I do that it is improper for me to hire an attorney to influence Judge Thorburn? Is it a crime? Should I turn myself in to the public prosecutor for my past offense? Or is it proper? May I rightfully retain counsel for the purpose of influencing the judge?

Please advise me.

Yours very truly,

Jack Rose

APPENDIX L

LETTER FROM PETITIONER TO HIS ATTORNEY-GUARDIAN

Jack Rose
6186 W. Outer Drive
Detroit, Michigan 48235

September 2, 1969

Mr. Steven N. Andrews
Attorney at Law
14 East Fourteen Mile Road
Clawson, Michigan 48017

Dear Mr. Andrews:

I received your letter of August 26, 1969. As you know I am appealing the order of appointment of a Guardian Ad Litem to the Court of Appeals. Despite your association with Judge Thorburn I believe that you are a sincere and honest person. Nevertheless, I cannot voluntarily surrender to you the management of my affairs, the control of my property, the direction of my life, or the selection of my counsel. Neither can I voluntarily pay you for a service I have not requested and do not want.

Please don't think that I am impertinent or rude, but I do not want you to be my guardian. I ask you to withdraw your acceptance of the guardianship. Heaven help us when the court can suspend a person's constitutional rights on the excuse that it is acting in his best interest. Is the usurpation of power any less tyrannical because the usurper claims to be acting in the best interest of his victim? How can you, a total stranger, even presume to know what is in my best interest?

I regard your appointment as a deprivation of my liberty and property without due process of law and an infringement of my constitutional right to defend my suit in my own proper person. I do not wish to offend you, but please understand that I cannot recognize you as my guardian or cooperate with you in any way. I am afraid that any acquiescence on my part—any voluntary act will constitute a waiver of my objection to your appointment. Furthermore, I cannot in good conscience become a party to the court's extortion.

Sincerely yours,

Jack Rose

JR/bd

APPENDIX M

◆

STATE OF MICHIGAN
In the Court of Appeals
Appeal from Oakland County Circuit Court

Nos. 09276, 22744 & 68-47753 Judge James S. Thorburn

Doris Rose, Plaintiff-Appellee,
v.
Jack Rose, Defendant-Appellant.
} Court of Appeals #8562

APPELLANT'S BRIEF

Statement of Questions Involved

Did the appointment of a guardian ad litem over the defendant deny him the opportunity to defend the instant divorce action?

The Trial Court never answered this question.
The Plaintiff never answered this question.
The Defendant says the answer should be "yes".

Statement of Facts

The parties were married on June 15, 1962 and lived together for 18 months. On April 13, 1964, plaintiff filed suit for separate maintenance. The suit was dismissed with prejudice by Judge James S. Thorburn on December 9, 1965. That same day plaintiff filed an action for divorce. The action was dismissed with prejudice by Judge Thorburn on April 29, 1966. An appeal was taken by the plaintiff to the Court of Appeals (#2237). The order of dismissal was affirmed on July 2, 1968. The instant case was filed on August 26, 1968.

Early in 1969, Judge Thorburn announced his intention to appoint a guardian ad litem over the defendant despite defendant's objections. On March 28, 1969, Judge Thorburn wrote the defendant advising him that he would name the guardian ad litem in court on April 23, 1969. Defendant sought leave to appeal to the Court of Appeals immediately. Leave to appeal was denied. On April 23, Judge Thorburn entered an Order Appointing Guardian Ad Litem. Again defendant sought leave to appeal to the Court of Appeals. Again leave to appeal was denied. No formal allegation was ever made that defendant was insane, mentally incompetent, or of unsound mind; nor was any insanity inquest ever held. The order of appointment itself only stated that the court was "satisfied from a review of the files and records of this cause that defendant is incompetent to properly represent himself in this particular cause". On August 15, 1969, Judge Thorburn ordered that Mr. Steven N. Andrews be substituted for Mr. Fred N. Searl as guardian ad litem "to protect the interests of the defendant".

Defendant petitioned the Trial Court for a stay of proceedings until it was decided who would represent the defendant. The petition was denied. The defendant wrote Mr. Andrews explaining that while the defendant had the highest regard for Mr. Andrews, he did not want him to be his guardian and explaining that the defendant could not cooperate with him in any way. The defendant requested Mr. Andrews to withdraw his acceptance of the guardianship. The request was denied.

After a trial date was assigned, the defendant made a motion to adjourn the trial, pointing out that he was not in a position to defend himself—not even in a position to file pleadings. The motion was denied. A Judgment of Divorce was entered after a proceeding referred to by Judge Thorburn as a "trial".

Argument

Defendant admits that he is incompetent to represent himself properly before Judge Thorburn. A litigant's competence to represent himself is measured by his ability to persuade the court. No litigant can persuade a court of anything once that court has decided that it will not be persuaded by the litigant. What does a litigant say to a court which declares that it will not hear the litigant? The defendant became incompetent to represent himself when Judge Thorburn announced that he was incompetent to represent himself. It was the announcement itself which rendered the defendant incompetent to represent himself.

In any event, whether or not the "defendant is incompetent to properly represent himself in this particular cause", he has a constitutional *right* to represent himself.

> A suitor in any court of this State has the right to prosecute or defend his suit, either in his own proper person or by an attorney (Michigan Constitution of 1963, Art I, Sec. 13)

Michigan Statutes clarify the constitution.

> Every person of full age and sound mind, may prosecute or defend civil actions in any court by an attorney, or may, at his election, prosecute or defend civil actions in person. No person shall be permitted to prosecute or defend any civil action in person, when he has an attorney in such case. (Revised Judicature Act of 1961 Sec. 1430)

No judge in Michigan is authorized to appoint a guardian ad litem for a litigant of full age and sound mind over the litigant's objection, nor is the defendant aware of any case where such an appointment has been made. Self-representation is not merely a privilege, it is an absolute *right.* It cannot be denied upon the assertion that such a denial is "to protect the interests of the defendant". Heaven help us when a court can deny a defendant's constitutional rights any time it wants to merely by intoning the magic phrase, "to protect the interests of the defendant". Dictators and tyrants have always justified the usurpation of power by claiming to protect the interests of the very people whose individual rights they trample upon.

Within a few months after Judge Thorburn had appointed a guardian ad litem over the defendant "to protect the interests of the defendant" (from Judge Thorburn himself, ironically) he destroyed the one thing that the defendant was interested in protecting—his marriage. Was the guardian ad litem any less incompetent to protect the interests of the defendant than the defendant himself? What else would the defendant have lost if he had ~~not~~ had a guardian ad litem to protect his interests? His liberty? His life? What worse punishment would Judge Thorburn have inflicted upon the defendant were he allowed to exercise his constitutional right to defend his suit in person? To complete the irony Judge Thorburn has voiced *his* feeling that a divorce was in the best interests of the defendant.

The defendant sought the advice of attorneys after the appointment of a guardian ad litem. These attorneys were at a loss to explain the order of appointment; they had never seen such an order before. They agreed, however, that the defendant could not just ignore the order even if it be invalid. The defendant was advised that the control of his litigation had been taken from him—that he could recover control only by petitioning the Court of Appeals to vacate the order of appointment. Accordingly, the defendant attempted to appeal the order to the Court of Appeals and ceased defending himself in the Trial Court.

The order of appointment of a guardian ad litem was such an infringement upon the defendant's right to defend himself—such a deprivation of the defendant's capacity to protect his marriage—such a gross departure from the "settled procedure" demanded by due process as to render the Judgment of Divorce invalid.

Relief Sought

It is requested of this Court that the Judgment of Divorce be declared void.

Respectfully submitted,

Jack Rose
23999 W. Ten Mile Road
Southfield, Michigan 48075

Dated: December 20, 1969

APPENDIX N

EXCERPTS FROM TRANSCRIPT OF TRIAL COURT PROCEEDINGS OF THE END OF SEPTEMBER, 1969

* * * * *

The Court: Mr. Andrews, are you ready?

Steven N. Andrews: I am ready, your Honor. As I understand the orders of this Court, I am to aid and assist my ward in the defense of this litigation?

The Court: That is correct. It may be unusual, but you stand in the legal place of the ward. It may be that this presents unlawful problems, but we will wait and see what occurs.

* * * * *

Mr. Andrews: Now, I must address myself to the question of attorney fees as guardian of my ward. I must join with Mr. Barris in many instances in indicating that it is the difficulty of the case, the situation the attorney-guardian is placed in, in the case at bar.

I first came into this case on August 25, 1969, or thereabouts. I have continued through this morning. I have spent time in preparation. I must say without question that I do not wish the Court to take into consideration any conversations which I may have had by telephone with Mr. Rose. And I wish the Court to remember that he at all times has indicated he would not cooperate with me. He does not wish me as his guardian.

However, my time in this case and my court appearances have been numerous. The record would speak for itself. We have had this trial, the preparation for the trial, the research of case law involved, some of the facts that I have obtained through other sources. And I ask the Court to take into consideration the competency of other counsel.

I ask this Court for an attorney fee of $20,101.20. * * *

* * * * *

APPENDIX O

EXCERPT FROM TRANSCRIPT OF TRIAL COURT PROCEEDINGS OF APRIL 23, 1969

* * * * *

The Court: . . . This Court presently is of the opinion that you are not competent to represent yourself in litigation of this magnitude. This is the position of the Court and the opinion of the Court.

Do you have anything further to say?

Mr. Rose: Well, Judge Thorburn, I admit that I am not a competent attorney. I wonder if you can find any layman who can pretend to be a competent attorney?

The Court: I don't think so, in a piece of litigation of this magnitude. I think you are correct in that assertion. That is why I repeatedly urged you to do what you did in two prior pieces of litigation. You hired extremely competent counsel, and I might add that you prevailed in each piece of litigation. I am at a loss as to why you won't do so here.

The only conclusion I can reach is that you need protection from yourself. This is why I intend to appoint a guardian ad litem for you.

Mr. Rose: Judge Thorburn, the Constitution of Michigan, the 1963 Constitution, Article I, Section 13 provides —I will read it:

> "A suitor in any court of this state has the right to prosecute or defend his suit either in his own proper person or by an attorney."

Now, the framers of the Constitution must have known that a layman cannot be competent to act as an attorney, but nevertheless they have given every layman that right, the right to—

The Court: That is correct. Your citation is accurate. But there is a corrollary. The case law shows, despite such a Constitution, that when a man is not competent to represent himself in proper person, the Court can in its discretion appoint a guardian ad litem for him to assist him.

* * * * *

APPENDIX P

STATE OF MICHIGAN—In the Circuit Court for the County of Oakland

Doris Wertheimer Rose, Plaintiff, v. Jack Rose, Defendant.	Nos. 9276 22744 68-47753

PLAINTIFF'S MOTION TO VACATE ORDER OF APRIL 23, 1969 APPOINTING A GUARDIAN AD LITEM

Now comes the plaintiff, Doris Wertheimer Rose, by her attorney, Ivan E. Barris, and hereby moves this Honorable Court for its order vacating its order of April 23, 1969 appointing a guardian ad litem for the defendant. In support of this Motion, the following is shown unto this Honorable Court:

1. That this Honorable Court, on its own motion, and in pursuance of a petition therefor earlier filed by the plaintiff, has heretofore, to-wit: on April 23, 1969, entered its order appointing guardian ad litem for the defendant.

2. That defendant is presently processing an Application for Leave to Appeal to the Michigan Court of Appeals with respect to said order appointing guardian ad litem for defendant.

3. That while plaintiff feels that said order of appointment of guardian ad litem was perfectly proper and a fair and judicious exercise of this Court's power, a power exercised in the interests of justice and the orderly administration of justice, plaintiff hereby requests that said order

be vacated and set aside for the reason that its entry has occasioned another flurry of appellate activity on the part of the defendant which in the ordinary course of events could lead to further delay in a final adjudication on the merits of the instant litigation[1].

4. That the existence of the said order, while obviously not intended as such by this Honorable Court, provides another vehicle for delay so obviously desired by the defendant.

5. That the plaintiff is entitled to her "day in court"; that she has been without support for over three years and has been able to sustain herself only by virtue of the fact that her parents have been loaning her substantial sums of money in the interim upon which to live.

6. That counsel for the plaintiff fervently believes, and thus avers the fact to be, that only a final adjudication on the merits of the instant litigation can serve the ends of justice and that accordingly, if the defendant wishes to exercise his constitutional right to appear as his own counsel this Honorable Court should allow him to do so rather than further delay these prceedings.

Wherefore, plaintiff prays this Court to enter its order vacating its order of April 23, 1969 appointing a guardian ad litem for defendant.

Ivan E. Barris
Attorney for Plaintiff
2066 Penobscott Bldg.
Detroit, Michigan 48226
WO 2-8210

---

[1] The designated guardian ad litem, Judge Searle, has indicated that he will not accept the appointment of guardian ad litem until the appellate court acts upon the defendant's Application for Leave to Appeal.

APPENDIX Q

LETTER FROM RESPONDENT'S ATTORNEY TO RESPONDENT

◆

PIGGINS, BALMER, GRIGSBY, SKILLMAN & ERICKSON
Attorneys and Counselors
David Stott Building
Detroit, Michigan 48226

June 10, 1965

Re: Rose vs. Rose

Mrs. Doris Rose
19775 Magnolia
Southfield, Michigan

Dear Doris:

The pretrial hearing this morning was adjourned to August. The Judge had to attend a meeting of all Oakland County Judges and he will be away for the month of July. In the meanwhile he very pointedly asked me if you would not consider changing your Complaint from separate maintenance to divorce. I promised him I would explore this matter thoroughly with you.

Should you agree to do so Mr. Buesser will, of course, promptly furnish me any and all information I may desire regarding assets and we can reschedule the depositions of Mr. Rose. Should we proceed with his deposition we would probably have to hire appraisers to determine true market values of closed corporations. All this will entail not only a great deal of time but a sizeable expense for you. It would seem wiser that we first amend our Complaint to a divorce and then submit to them a proposal of settlement in order to see if we can reach an agreement without hiring appraisers, etc., in preparation for trial.

Please advise.

Very truly yours,

PIGGINS, BALMER, GRIGSBY,
SKILLMAN & ERICKSON
By Rowe A. Balmer

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SUPREME COURT, U. S.

Supreme Court, U.S.
FILED
JUL 13 1971
E. ROBERT SEAVER, CLERK

70-289

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. ~~1834~~

DORIS ROSE,
Respondent and Plaintiff-Appellee,

vs.

JACK ROSE,
Petitioner and Defendant-Appellant.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

IVAN E. BARRIS
Attorney for Plaintiff-Appellee
2555 Guardian Building
Detroit, Michigan 48226
965-5565

Interstate Brief & Record Co., 1036 Beaubien St., Detroit, Michigan 48226
WO. 2-8745—WO. 2-8732

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 1834

DORIS ROSE,
Respondent and Plaintiff-Appellee,

vs.

JACK ROSE,
Petitioner and Defendant-Appellant.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States.

In addition to the Opinions and/or Orders set forth by the Petitioner on page 2 of his Petition for Writ of Certiorari, the Respondent hereby directs the attention of this Honorable Court to a highly significant Order of the Michigan Supreme Court which the Petitioner has conveniently "overlooked", to-wit, the Order of October 29, 1970, denying his Application for Leave to Appeal and from which he took no application for rehearing, thus rendering said Order a final one. (This Order is contained in Appendix A to this Brief and may be found hereinafter at page 15.)

JURISDICTION

As will be discussed hereinafter in greater detail, this Court has no jurisdiction to entertain the Petition for Writ of Certiorari for the reason that said Petition is untimely. The final Order of the Michigan Supreme Court disposing of the controversy, as to which the Petitioner made no Application for Rehearing, was entered by the Michigan Supreme Court on October 29, 1970. In order to be timely, he would have been required to file with this Honorable Court a Petition for Writ of Certiorari within ninety (90) days (Title 28, USC Sec. 2101(c)). This he did not dc, but rather delayed seeking relief from this Honorable Court until June 14, 1971.

QUESTION PRESENTED FOR REVIEW

A reading of the five questions presented for review in the Petition for Writ of Certiorari quickly indicates that none of the questions, except question 3 (page 4 of the Petition for Writ of Certiorari), even presents a federal question and, as will be discussed in greater detail hereinafter, even question 3 does not present a substantial federal question in view of the facts and circumstances.

STATEMENT OF THE CASE

The legal "genesis" of the marital conflict between the parties was in 1964 when Mrs. Rose filed in the Oakland Circuit Court a Complaint for Separate Maintenance, and capsulated below is a brief summary of what has occurred in the subsequent litigation:

1. The initial suit for separate maintenance (No. 9276), as aforesaid, ended in an Order of Dismissal entered by Judge Thorburn when Mrs. Rose sought unsuccessfully on the day of trial to amend her Complaint from one seeking separate maintenance to one for absolute divorce and declined to prosecute the Complaint for Separate Maintenance.

2. Subsequently, Mrs. Rose, again in the Oakland Circuit Court, commenced a suit for absolute divorce (No. 22744), and this suit likewise ended in an Order of Dismissal when Mr. Rose, through his then counsel, successfully urged upon Judge Thorburn that the Order of Dismissal in the initial suit formed the basis for a claim of *res adjudicata,* since the acts of extreme and repeated cruelty asserted in the divorce action were the same as those asserted in the initial suit for separate maintenance. The Order of Dismissal in the second suit was affirmed by the Michigan Court of Appeals in *Rose v. Rose,* 10 Mich App 233 (1968).

3. In August of 1968 Mrs. Rose commenced a third action (Oakland County Circuit Court No. 47533), in which she again sought an absolute divorce and *in which the acts of extreme and repeated cruelty upon which she relied in each instance occurred subsequent to the Order dismissing the second suit.*

At the outset of case No. 68-47533 (hereinafter referred to as the "instant" case), the defendant, who had by now discharged his eminent counsel,[1] Mr. Frederick G. Buesser, Jr., appeared in *Pro Per* and filed a motion to disqualify Judge Thorburn, supported by the most scurrilous "legal" document this counsel has ever had the misfortune to read, as set forth verbatim below:

> "JACK ROSE being duly sworn deposes and says
>
> "THAT he has compelling evidence of a financial interest on the part of Judge James S. Thorburn in the above entitled litigation.
>
> "THAT this interest arises from a corrupt agreement between Judge Thorburn and plaintiff's counsel to share the attorney fees wrongfully ordered by Judge Thorburn,
>
> "THAT, in fact, this vexatious litigation has been sustained by Judge Thorburn only for the purpose of generating attorney fees,
>
> "THAT he has no interest whatsoever in dispensing justice but only in dispensing attorney fees,

---

[1] During the trial of this proceeding, the Petitioner began to clearly manifest his emotional instability and for the first time was found guilty of contempt of court and confined to jail. Subsequently, he discharged his counsel and has thereafter appeared in his proper person in both the Trial Court and in various appellates courts. A reading of the transcript of trial, plus a reading of the various pleadings filed by the Respondent, clearly indicates that his bizarre and zany conduct has deteriorated to a point where he now at least borders upon paranoia. The times he has been found guilty of contempt by the Trial Court are legion and he also has been adjudged guilty of contempt of the Michigan Court of Appeals. From time to time he has accused both the Trial Court and all of the judges of the Michigan Court of Appeals (with the exception of one) of being corrupt and at page 7 of the Brief filed by the Respondent in the Michigan Supreme Court in opposition to the Application for Leave to Appeal is found a listing of other litigation which the Petitioner has seen fit to commence. (This Brief is annexed hereto as Appendix B and the specific reference above made is hereinafter found at page 18-19 of this Brief.)

> "THAT Judge Thorburn is unfit not only to hear this case, but is unfit to hear any case because he is a criminal—an extortionist, a fraud-feasor, a blackmailer, and a racketeer.
>
> "THAT while he holds the elected position of Judge he is not a true judge but merely a grotesque caricature of a judge—a cheap, shabby, corrupt little man who sits in black robes behind a bench,
>
> "THAT, defendant has reported Judge Thorburn's misconduct to the Supreme Court of Michigan and his crimes to the office of the Oakland County Prosecutor."

When the motion to disqualify Judge Thorburn was denied by Judge Beasley, "stormy" litigation ensued and and on several occasions Judge Thorburn fervently suggested to Mr. Rose that he obtain counsel, all of which requests fell on deaf ears. Judge Thorburn, in an unsuccessful effort to make "order out of chaos", then suggested that Mr. Edward Rose,[2] Jack Rose's father and a man of unquestioned integrity in the community, might act as guardian ad litem. Mr. Edward Rose declined to do so. Thereafter, Judge Thorburn, after a hearing was conducted during which he gave Mr. Rose an opportunity to present evidence in opposition to the appointment of a guardian ad litem, nominated former Circuit Judge Fred N. Searl as guardian ad litem. Ultimately Judge Searl resigned as guardian ad litem because of serious illness. Judge Thorburn, after inquiring of Mr. Rose as to whether he would voluntarily submit to a psychiatric examination concerning his mental competence and being advised by Mr. Rose in the negative, selected Mr. Steven Andrews, an attorney practicing in Clawson, Michigan, to act as guardian ad litem.

---

[2] The Rose family is extremely wealthy. Petitioner's individual estate is well in excess of three and a half million dollars.

The trial commenced on September 25 and continued on September 29 and 30 and October 3, 1969. During the trial, not only did Mr. Andrews cross-examine plaintiff's witnesses, make appropriate motions, present evidence and make a closing argument, but, most significantly, Mr. Rose was afforded an opportunity, and in many cases availed himself of the opportunity, to personally cross-examine plaintiff's witnesses, make motions, object to the admission of evidence and make a closing argument.[3]

At the conclusion of the proofs, Judge Thorburn rendered his Opinion granting Mrs. Rose a divorce based upon several acts of extreme and repeated cruelty *which occurred subsequent to the order dismissing the second action between the parties* (which was the initial action for divorce—the first litigation being one for separate maintenance). A Judgment of Divorce was entered on October 22, 1969.

A Claim of Appeal to the Court of Appeals was timely filed by Mr. Rose, again in *Pro Per,* and on November 13, 1969 counsel for Mrs. Rose, well aware of Mr. Rose's delaying and dilatory tactics,[4] wrote the following letter to Mr. Rose:

> "Dear Mr. Rose:
>
> "It is has come to my attention that the only portion of the transcript of proceedings which you have ordered relates to the trial proper.

---

[3] See certified copy of transcript.

[4] The Rose litigation, at least since Mr. Rose has appeared in *Pro Per,* has generated literally *scores* of appeals from various interlocutory orders. From the time of the dismissal of the second action (the first divorce action), Mrs. Rose was totally without funds and Mr. Rose's refusal to support her went so far as to impel him to refuse to comply with temporary alimony orders entered by both the Trial Court and the Court of Appeals.

> "I am writing this letter to advise you in advance that under the applicable Court Rules you are required to file the transcript of all the proceedings in the matter, including all pre-trial motions heard by Judge Thorburn, and also, the Motion to Disqualify heard at the beginning of the proceedings by Judge Beasley. I advise you of this situation now so that the situation can be rectified forthwith. If the entire transcript is not filed as required by the Court Rules, I will take immediate steps to strike the appeal, and I contemplate attaching a copy of this letter to that Motion so that you cannot plead, as you are often prone to do, your ignorance of the Rule."

When Mr. Rose blithely disregarded the request contained in counsel's letter of November 13, 1969, a "follow-up" letter was forwarded to Mr. Rose on December 23 as follows:

> "Dear Mr. Rose:
>
> "I am in receipt of your letter of December 20 and this is to advise that I insist upon the transcript of all hearings which took place in the cause from the day it was started until the date of entry of the Judgment of Divorce on October 22, 1969, and further, I am entitled to such because the stenographer is required by the provisions of Rule 812.-3(1) to file the transcript of the testimony *and hearings* unless I stipulate that there be a deletion from the record of certain portions of the testimony and hearings.
>
> "I am not insisting upon this out of sheer orneriness, although obviously your antics have tried my patience practically to the breaking point, but I do so because I believe that much of your colloquy incident to several of these hearings reflects your (to be charitable) 'bizarre' behavior which caused the judge to appoint a guardian ad litem.

> "I am sending a copy of this letter to Kaye Konselman, Judge Thorburn's court reporter, and unless she advises me by January 5 that you have ordered all these other transcripts, I am going to move to strike your appeal for failure to comply with the court rule as I promised you I would in my earlier letter."

When the request for all the transcripts of the proceedings, including various pretrial motion colloquies, was not forthcoming by January 5, 1970, counsel for Mrs. Rose, true to his word as contained in the letter of December 23, 1969, filed a Motion for Order Dismissing Defendant-Appellant's Appeal for Failure to Comply With Court Rules, or, in the Alternative, Order Requiring Defendant-Appellant to File Complete Record and Giving Plaintiff-Appellee Forty (40) Days to File Her Brief From Date of Service of Complete Record Upon Her Counsel. (This Motion is contained in Appendix C hereto and is found at page 43 through 45 hereof.)

When the Petitioner stubbornly refused to file with the Michigan Court of Appeals the transcripts on the hearing of the various pre-trial motions which ultimately led to the appointment of a Guardian ad Litem, the Michigan Court of Appeals on July 17, 1970—more than six months after the Respondent herein had filed her Motion for Order Dismissing Defendant-Appellant's Appeal for Failure to Comply with Court Rules, or, in the Alternative, Order Requiring Defendant-Appellant to File Complete Record and Giving Plaintiff-Appellee Forty (40) Days to File her Brief from Date of Service of Complete Record Upon Her Counsel—entered the Order of Dismissal.

On August 26, 1970 the Michigan Court of Appeals entered its Order Denying a Rehearing. Thereafter, on September 21, 1970, the Petitioner filed with the Michigan

Supreme Court an Application for Leave to Appeal in which he did not even raise the issue of the propriety of the appointment of a Guardian ad Litem, but rather limited his application for Leave to Appeal to the issue of whether the Michigan Court of Appeals had properly dismissed his appeal (said Application for Leave to Appeal with supporting Brief, is found herein in Appendix D, at pages 46 through 88). The final order denying this Application for Leave to Appeal, as before stated, was entered by the Michigan Supreme Court on October 29, 1970 and the Petitioner did not seek a rehearing thereon within the twenty (20) days provided in the Michigan General Court Rules of 1963, Rule 864.4.

After ninety (90) days had expired from the entry of the Order on October 29, 1970 denying the Petitioner's Application for Leave to Appeal, the Respondent satisfied the Judgment through obtaining the proceeds of a Letter of Credit which had, by agreement by the parties, constituted a Stay Bond (a copy of the Order authorizing disbursement of said funds on February 17, 1971 is contained in Appendix E hereto, at pages 89 through 90).

For some inexplicable reasons, the Petitioner has ever since October 29, 1970 been engaged in a flurry of appellate activity and has on numerous occasions attempted to return to the Trial Court in a futile effort to vacate the Judgment of October 29, 1969 which was finalized by the Order of the Michigan Supreme Court on October 29, 1970 denying the Application for Leave to Appeal. He finally returned to the Michigan Supreme Court on January 25, 1971 when he filed a new Application for Leave to Appeal. This Application is contained in Appendix F, at page 91, and *it should be noted that in the last paragraph thereof the Petitioner candidly acknowledges that the issues raised therein were precisely the same as those* *disposed of by the Michigan Supreme Court in its Order of October 29, 1970.* The Brief in support of this second Application for Leave to Appeal is contained in Appendix G hereto, at page 92, and its contents, namely an excerpt from a cartoon, underscores the propriety of the Trial Court's action in appointing a Guardian ad Litem. This second Application for Leave to Appeal was denied by the Michigan Supreme Court on March 16, 1971.

LEGAL ARGUMENT

I.

THE PETITION FOR WRIT OF CERTIORARI IS UNTIMELY AND THUS THIS HONORABLE COURT HAS NO JURISDICTION TO ENTERTAIN SAME.

As detailed above, the Order of the Michigan Supreme Court dated October 29, 1970 constituted a final disposition of this matter, at least as a matter of law, but regrettably, not in the eyes of the Petitioner who seems bent upon sailing the sea of litigation forever in a manner emulating the legendary "Flying Dutchman". When the Order of October 29, 1970 was entered, the Petitioner, for reasons known only to him, saw fit not to file an Application for Rehearing[5] and thus his ninety (90) days in which to file a Petition for Writ of Certiorari to this Honorable Court commenced to run and did in fact run many months before he ultimately filed said Petition with this Honorable Court on June 14, 1971. (See Title 28, USC, Sec. 2101(c).

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[5] Michigan General Court Rule 864.4 provides in pertinent part:

> "Application for Rehearing. No application for rehearing will be considered by the Court unless the moving party, within 20 days from the filing of the opinion therein, causes any papers upon which it is based, together with his reasons for granting the same, to be printed, and 24 copies thereof to be filed with the Clerk of this Court, and a copy thereof to be served upon the counsel for the opposite party. * * *"

Assuming *arguendo* that his second Application for Leave to Appeal even deserves the dignity of being characterized as a pleading, the Petitioner raised no new issue therein and even if he had, he could not breathe life into an appeal which had run its course when he did not file an Application for Rehearing from the Order of October 29, 1970 in the Michigan Supreme Court.

II.

NO FEDERAL QUESTION HAS BEEN PROPERLY PRESERVED FOR REVIEW BY THIS HONORABLE COURT.

As may be gleaned from a perusal of the Statement of Proceedings and from a review of the certified record in the Michigan Supreme Court, the Petitioner, while he had an opportunity to raise in the Michigan Supreme Court any and all issues in his Application for Leave to Appeal, saw fit to limit his Application for Leave to Appeal to the sole issue of the propriety of the dismissal of his appeal by the Michigan Court of Appeals for his blatant and persistent refusal to comply with its rules. Nowhere in the Michigan Supreme Court has Petitioner raised *any* of the issues which he now urges before this Honorable Court and, axiomatically, this Honorable Court should not and will not concern itself with issues which have not been brought to the attention of and decided by the appellate courts of a given State.

III.

AS TO THE CONTENTION THAT THE PETITIONER WAS NOT AFFORDED DUE PROCESS WHERE (AS HE ERRONEOUSLY CLAIMS) HE WAS DENIED HIS CONSTITUTIONAL RIGHT TO DFEND HIS SUIT IN HIS OWN PROPER PERSON, SAME NOT ONLY IS NOT A FEDERAL QUESTION OF SUBSTANCE WITHIN THE PURVIEW OF RULE 19 OF THIS HONORABLE COURT BUT ALSO IS WITHOUT MERIT.

Without citing *onc* case in support of his contention that he was denied due process of law and without suggesting to this Honorable Court any of the reasons set forth in Rule 19 of the Supreme Court Rules as to why this Court of last resort should concern itself with his Petition for Writ of Certiorari, the Petitioner seeks to move the discretion of this Honorable Court to grant him relief.

In all candor, counsel for the Respondent, in preparing this opposition brief, has been compelled to resist the overwhelming urge not to even dignify the Petition with a Brief in opposition to same, but common sense has suggested that this Honorable Court be advised of the matters of record which the Petitioner saw fit not to reveal to this Honorable Court.

Moving to the merits of the Petitioner's contention, the fact of the matter is that the record of the trial clearly indicates that the proceeding was conducted in a patently fair manner to the point where the trial court "bent over backwards" to give the Petitioner his day in court.

Michigan General Court Rule 201.5(2) (quoted in full in the footnote),[6] allows the Trial Court to make the appointment of a Guardian ad Litem on his own Motion and Michigan General Court Rule 201.5(4) provides that if the incompetency occurs while the action is pending, ". . . he may be represented by the guardian of his estate or the court may appoint a next friend or guardian ad litem, as the case may require, in like manner as if the action had been commenced after such appointment."

In other words, what the Trial Court did herein was not only not erroneous but, to the contrary, was absolutely necessary not only to carry out the orderly administration of justice but also to insure that the Petitioner's rights would not be prejudiced by his lack of good judgment, legal ability and skill. Moreover, it is respectfully suggested that even if the Trial Court did commit error, by no stretch of the imagination was the Petitioner prejudiced by such an error. He was in no way precluded from representing himself, but rather he, in a very real sense, "had two bites at the litigation apple" for the price of one. He was afforded an opportunity to make an opening statement, to make motions, to cross-examine Respondent's witnesses (and the Respondent), and to make a closing argument.

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[6] "(2) Appointment of Representative. Appointment of next friend or guardian ad litem shall be made by the court: (1) upon the nomination of an infant party over the age of 14 years, accompanied by the consent in writing of the person to be so appointed; or (2) in the case of an infant party under the age of 14 years or an incompetent party, upon the nomination of the next of kin of such party, or that of any other relative or friend whom the court deems suitable, accompanied by a like consent; or (3) in the event that no such nomination is made or approved within 20 days after service or process, upon motion of the court or that of any party. The court in its discretion may refuse to appoint any representative deemed unsuitable. The order appointing any person next friend or guardian ad litem shall be promptly filed with the clerk of the court."

He did, in fact, avail himself of many of these opportunities. Hence, if anyone was prejudiced by the procedure followed, it was the Respondent and not the Petitioner.[7]

RELIEF

WHEREFORE, Respondent respectfully requests that the Petition for Writ of Certiorari be denied.

IVAN E. BARRIS
Attorney for Respondent
2555 Guardian Building
Detroit, Michigan 48226
965-5565

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[7] For the sake of brevity, counsel for the Respondent directs this Honorable Court to pages 3 through 9 of the Brief filed in the Michigan Supreme Court in opposition to the Application for Leave to Appeal, here found as Appendix B, at pages 25 through 26, for a more thorough discussion of the lack of merit of Petitioner's contention.

APPENDIX A

(No. 53044 and 53045)

ORDER DENYING APPLICATIONS FOR LEAVE TO APPEAL

At a session of the Supreme Court of the State of Michigan, held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the 29th day of October in the year of our Lord one thousand nine hundred and seventy.

Present the Honorable Thomas E. Brennan, Chief Justice, John R. Dethmers, Harry F. Kelly, Eugene F. Black, Thomas M. Kavanagh, Paul L. Adams, Thomas G. Kavanagh, Associate Justices.

On order of the Court, the applications for leave to appeal are considered, and the same are hereby denied, for the reasons that defendant and appellant has failed to persuade the Court that he has a meritorious basis for appeal or that the determination of the Court of Appeals was clearly erroneous.

State of Michigan—ss.

I, Donald F. Winters, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 29th day of October in the year of our Lord one thousand nine hundred and seventy.

Donald F. Winters,
Clerk.

APPENDIX B

STATE OF MICHIGAN
IN THE SUPREME COURT

Appeal from the Michigan Court of Appeals

National Bank of Detroit, a
national banking association,
Plaintiff-Appellee,
v.
Jack Rose,
Defendant-Appellant,
and
Doris Wertheimer Rose, Ivan E, Barris and
Steven N. Andrews,
Defendants-Appellees.

Court of Appeals No. 8866
Supreme Court No. ....

Doris Wertheimer Rose,
Plaintiff-Appellee,
v.
Jack Rose,
Defendant-Appellant.

Oakland County Circuit Court
Nos. 9276, 22744 and 68-47753
Court of Appeals No. 8562
Supreme Court No. ......

APPELLEE DORIS WERTHEIMER ROSE'S BRIEF IN OPPOSITION TO APPLICATION FOR LEAVE TO APPEAL

Preliminary Statement and Background Information

Historians advise that the first War of the Roses was fought, at least intermittently, over a period of some thirty years (1455-1485). It is but a slight exaggeration to state that if Mr. Rose has his way the instant "War of the Roses" will span a period which, relatively speaking, will make the first War of the Roses appear to be only slightly longer than the so-called "Six-Day War" fought in the Middle East in 1967. Hopefully (and experience dictates that the hope will probably be forlorn), this latest "skimish", as represented by Mr. Rose's Application for Leave to Appeal, will constitute the "last battle" in a judicial confrontation which dates back to 1964 and which has been characterized by a course of conduct on the part of Mr. Rose which has been as dilatory as it has been contemptuous and insolent.

The legal 'genesis" of the marital conflict between the parties was in 1964 when Mrs. Rose filed in the Oakland Circuit Court a Complaint for Separate Maintenance, and capsulated below is a brief summary of what has occurred in the subsequent litigation:

1. The initial suit for separate maintenance (No. 9276), as aforesaid, ended in an Order of Dismissal entered by Judge Thorburn when Mrs. Rose sought unsuccessfully on the day of trial to amend her Complaint from one seeking separate maintenance to one for absolute divorce and declined to prosecute the Complaint for Separate Maintenance.

2. Subsequently, Mrs. Rose, again in the Oakland Circuit Court, commenced a suit for absolute divorce (No. 22744), and this suit likewise ended in an Order of Dismissal when Mr. Rose, through his then counsel, successfully urged to Judge Thorburn that the Order of Dismissal in the initial suit formed the basis for a claim of *res adjudicata,* since the acts of extreme and repeated cruelty asserted in the divorce action

were the same as those asserted in the initial suit for separate maintenance. The Order of Dismissal in the second suit was affirmed by the Court of Appeals in Rose v. Rose, 10 Mich App 233 (1968).

3. In August of 1968 Mrs. Rose commenced a third action (Oakland County Circuit Court No. 47533), in which she again sought an absolute divorce and in which the acts of extreme and repeated cruelty upon which she relied in each instance occurred subsequent to the Order dismissing the second suit.

At the outset of case No. 68-47533 (hereinafter referred to as the "instant" case), the defendant, who had by now discharged his eminent counsel, Mr. Frederick G. Buesser, Jr., appeared in *Pro Per* and filed a motion to disqualify Judge Thorburn, supported by the most scurrilous "legal" document this counsel has ever had the misfortune to read, as set forth verbatim below:[1]

> JACK ROSE being duly sworn deposes and says
>
> "THAT he has compelling evidence of a financial interest on the part of Judge James S. Thorburn in the above entitled litigation.

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[1] During the course of a multitude of pretrial proceedings, as well as to a certain extent during the trial, Judge Thorburn, in the face of extreme provocation, including numerous personal insults heaped upon him by Mr. Rose, was the personification of judicial restraint. Not once did he cite Mr. Rose for contempt of court by reason of his outbursts. However, during the course of various facets of the Rose litigation, Mr. Rose has been adjudged in contempt of both the Trial Court and the Court of Appeals on several occasions, such contempt being predicated upon his blatant failure to comply with temporary alimony and support orders, interim attorney fee orders and discovery orders. Altogether he has spent something like 100 days in the Oakland County Jail in pursuance of various contempt citations issued by both the Trial Court and the Court of Appeals.

> "THAT this interest arises from a corrupt agreement between Judge Thorburn and plaintiff's counsel to share the attorney fees wrongfully ordered by Judge Thorburn,
>
> "THAT, in fact, this vexatious litigation has been sustained by Judge Thorburn only for the purpose of generating attorney fees,
>
> "THAT he has no interest whatsoever in dispensing justice but only in dispensing attorney fees,
>
> "THAT Judge Thorburn is unfit not only to hear this case, but is unfit to hear any case because he is a criminal—an extortionist, a fraud-feasor, a blackmailer, and a racketeer.
>
> "THAT while he holds the elected position of Judge he is not a true judge but merely a grotesque caricature of a judge—a cheap, shabby, corrupt little man who sits in black robes behind a bench,
>
> "THAT, defendant has reported Judge Thorburn's misconduct to the Supreme Court of Michigan and his crimes to the office of the Oakland County Prosecutor."

When the motion to disqualify Judge Thorburn was denied by Judge Beasley, "stormy" litigation ensued and on several occasions Judge Thorburn fervently suggested to Mr. Rose that he obtain counsel, all of which requests fell on deaf ears. Judge Thorburn, in an unsuccessful effort to make "order out of chaos", then suggested that Mr. Edward Rose, Jack Rose's father and a man of unquestioned integrity in the community, might act as guardian ad litem. Mr. Edward Rose declined to do so. Thereafter, Judge Thorburn, after a hearing was conducted during which he gave Mr. Rose an opportunity to present evidence in opposition to the appointment of a guardian ad litem, nominated former Circuit Judge Fred N. Searl as guardian ad litem. Ultimately Judge Searl resigned as guardian ad litem because of serious illness. Judge Thorburn, after inquiring of Mr. Rose as to whether he would voluntarily submit to a psychiatric examination concerning his mental competence and being advised by Mr. Rose in the negative, selected Mr. Steven Andrews, an attorney practicing in Clawson, Michigan, to act as guardian litem.

The trial commenced on September 25 and continued on September 29 and 30 and October 3, 1969. During the trial, not only did Mr. Andrews cross-examine plaintiff's witnesses, make appropriate motions, present evidence and make a closing argument, but, most significantly, Mr. Rose was afforded an opportunity, and in many cases availed himself of the opportunity, to personally cross-examine plaintiff's witnesses, make motions, object to the admission of evidence and make a closing argument.[2]

At the conclusion of the proofs, Judge Thorburn rendered his Opinion granting Mrs. Rose a divorce based upon several acts of extreme and repeated cruelty which occurred subsequent to the order dismissing the second action between the parties (which was the initial action for divorce—the first litigation being one for separate maintenance). A Judgment of Divorce was entered on October 22, 1969.

A Claim of Appeal to the Court of Appeals was timely filed by Mr. Rose, again in *Pro Per,* and on November 13, 1969 counsel for Mrs. Rose, well aware of Mr. Rose's delaying and dilatory tactics,[3] wrote the following letter to Mr. Rose:

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[2] Mr. Rose is a third year law student attending night school at Wayne State University Law School.

"Dear Mr. Rose:

> "It has come to my attention that the only portion of the transcript of proceedings which you have ordered relates to the trial proper.
>
> "I am writing this letter to advise you in advance that under the applicable Court Rules you are required to file the transcript of all the proceedings in the matter, including all pre-trial motions heard by Judge Thorburn, and also, the Motion to Disqualify heard at the beginning of the proceedings by Judge Beasley. I advise you of this situation now so that the situation can be rectified forthwith. If the entire transcript is not filed as required by the Court Rules, I will take immediate steps to strike the appeal, and I contemplate attaching a copy of this letter to that Motion so that you cannot plead, as you are often prone to do, your ignorance of the Rule."

When Mr. Rose blithely disregarded the request contained in counsel's letter of November 13, 1969, a "follow-up" letter was forwarded to Mr. Rose on December 23 as follows:

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[3] The Rose litigation, at least since Mr. Rose has appeared in *Pro Per*, has generated literally scores of appeals from various interlocutory orders. From the time of the dismissal of the second action (the first divorce action), Mrs. Rose was totally without funds and Mr. Rose's refusal to support her went so far as to impel him to refuse to comply with temporary alimony orders entered by both the Trial Court and the Court of Appeals.

> "Dear Mr. Rose:
>
> "I am in receipt of your letter of December 20 and this is to advise that I insist upon the transcript of all hearings which took place in the cause from the day it was started until the date of entry of the Judgment of Divorce on October 22, 1969, and further, I am entitled to such because the stenographer is required by the provisions of Rule 812.3(1) to file the transcript of the testimony *and hearings* unless I stipulate that there be a deletion from the record of certain portions of the testimony and hearings.
>
> "I am not insisting upon this out of sheer orneriness, although obviously your antics have tried my patience practically to the breaking point, but I do so because I believe that much of your colloquy incident to several of these hearings reflects your (to be charitable) 'bizarre' behavior which caused the judge to appoint a guardian ad litem.
>
> "I am sending a copy of this letter to Kaye Konselman, Judge Thorburn' court reporter, and unless she advises me by January 5 that you have ordered all these other transcripts, I am going to move to strike your appeal for failure to comply with the court rule as I promised you I would in my earlier letter."

When the request for all the transcripts of the proceedings, including various pretrial motion colloquies, was not forthcoming by January 5, 1970, counsel for Mrs. Rose, true to his word as contained in the letter of December 23, 1969, filed a Motion for Order Dismissing Defendant-Appellant's Appeal for Failure to Comply With Court Rules, or, in the Alternative, Order Requiring Defendant-Appellant to File Complete Record and Giving Plaintiff-

Appellee Forty (40) Days to File Her Brief From Date of Service of Complete Record Upon Her Counsel.

For reasons unknown to counsel, the Court of Appeals did not act upon the Motion until it entered its order of July 17, 1970 dismissing Mr. Rose's appeal, and thereafter Mr. Rose's Petition for Rehearing was denied by the Court of Appeals. He then proceededed to seek leave to appeal from this Honorable Court, but only after his Application for Rehearing on the Petition for Rehearing, which he attempted to file with the Court of Appeals, was returned to him as not being a proper pleading.

Legal Argument

Succinctly stated, what happened below is that Mr. Rose, having so many times played with fire and not having been burned, finally ended up with his "fingers burnt". Both the Trial Court and the Court of Appeals, during some six years of litigation, have (and perhaps properly so) "bent backwards" for Mr. Rose, probably in recognition of the fact that Mr. Rose is a layman. In other words, apparently even the almost inexhaustible supply of patience which the Court of Appeals has shown toward Mr. Rose came to an end, and high time it should, for he has turned the judicial process into litle more than a farce to serve his own ends.[4]

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[4] Appended hereto as Exhibit I is a Brief filed with the Court of Appeals by Mr. Rose in Court of Appeals case No. 8866. Counsel for defendant cannot conceive that a practicing attorney would have been allowed to go unpunished for filing a document of such a scurrilous nature. A reading of pages 6 and 7 of this so-called "Brief" in which, *inter alia*, Mr. Rose called every judge of the Michigan Court of Appeals except one corrupt, underscores the propriety—indeed, the absolute necessity—of Judge Thorburn's order appointing a guardian ad litem.

(Continued on next page)

The long and short of the matter is that Mr. Rose blatantly disregard the court rules and was advised by counsel for Mrs. Rose in the letters of November 13 and December 23, 1969 that he would "be held to account" for this knowing disregard of the court rules. It is perhaps unfortunate for Mr. Rose that he "miscalculated" what would be the ultimate outcome of this failure to comply with the court rules, but such a miscalculation is scarcely a proper predicate for this Honorable Court "up turning" the order of the Court of Appeals.

The only issue which Mr. Rose raised in the Court of Appeals was the propriety of the appointment of the guardian ad litem. *He made no complaint about any evidentiary ruling by Judge Thorburn, he made no complaint about any finding of fact made by Judge Thorburn, he made no complaint about the amount awarded to either Mrs. Rose or her counsel by way of final attorney fees. The only error which he asserted in the Court of Appeals pertained to the supposed impropriety of the appointment of the guardian ad litem, and yet he deliberately saw fit not to file the transcripts of all the pretrial motions which bore upon this issue.*

While the propriety of the order of appointment of the guardian ad litem is, strictly speaking, not before this

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(Continued from preceding page)

It should also be noted that Mr. Rose's litigious instincts have resulted in a veritable proliferation of litigation, including the following: 1) he has sued his ex-mother-in-law for alienation of affection and fraud; 2) he has sued his wife's uncle, a dentist, claiming fraud and overcharges; 3) he has filed a counterclaim in a suit brought by his wife's psychiatrist, claiming professional improprieties; 4) he sued three judges of the Court of Appeals in the Federal District Court under the so-called "Civil Rights Act", alleging Mrs. Rose's counsel to be a co-conspirator; and 5) he has just recently filed a suit in the Oakland Circuit Court, naming Judge Thorburn and Mrs. Rose's counsel as party defendants, claiming that said counsel has entered into an agreement to pay a "kickback" to Judge Thorburn.

Honorable Court at this time, it is respectfully suggested that this Honorable Court may take into consideration the following factors in deciding whether to reverse the order of the Court of Appeals:

1. Mr. Rose, in the Court of Appeals, filed an Affidavit in which he (almost unbelievably) acknowledged under oath that he was incompetent to represent himself in the Oakland Circuit Court. A copy of this affidavit is set forth verbatim below.[5]

> "Jack Rose, being duly sworn deposes and acknowledges that he was incompetent to represent himself in Oakland County Circuit Court Case No. 68-47753."

2. The Michigan General Court Rule specifically authorizes the trial judge to appoint a guardian ad litem under the present circumstances. Specifically, Rule 201.-5(2) allows the Court to make such an appointment on its own motion, and Rule 201.5(4) provides that if the incompetency occurs while the action is pending, ". . . he may be represented by the guardian of his estate or the court may appoint a next friend or guardian ad litem, as the case may require, in like manner as if the action had been commenced after such appointment".[6]

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[5] It is respectfully urged that this Affidavit, for all practical purposes, "mooted" the only issue raised by Mr. Rose in the Court of Appeals, and while counsel for the appellee obviously is not privy to the mental processes of the judges of the Court of Appeals, it is not wholly unrealistic to surmise that they considered the lack of worth of the appeal in rendering their order of outright dismissal.

[6] For the proposition that a Trial Court has the right—nay, the duty—to appoint a guardian ad litem under circumstances present herein, see *Sengstack v. Sengstack*, 4 NY2d 502, 176 NYS2d 337, 151 NE2d 887, 71 ALR2d 1237, a copy of which Opinion is apnended hereto as Exhibit II.

3. Assuming, *arguendo,* that the Trial Court did commit error in appointing a guardian ad litem for Mr. Rose, it is respectfully suggested that by no stretch of the imagination was Mr. Rose prejudiced by such error, if error it be. He was in no way precluded from representing himself, but rather he, in a very real sense, "had two bites at the litigation apple" for the price of one. He was afforded an opportunity to make an opening statement, to make motions, to cross-examine plaintiff's witnesses (and the plaintiff), and to make a closing argument. He did, in fact, avail himself of many of these opportunities. In other words, if anyone was prejudiced by the procedure followed, it was the plaintiff[7] and not Mr. Rose.

Relief Sought

WHEREFORE, appellee Doris Wertheimer Rose respectfully urges that the Application for Leave to Appeal be summarily denied.

Respectfully submitted,

Ivan E. Barris
Attorney for Appellee
2066 Penobscot Building
Detroit, Michigan 48226
WO 2-8210

September 30, 1970

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[7] Of course, she did not object to the procedure for the obvious reason that the presence of the guardian ad litem was to a certain degree a stabilizing influence without whose presence the trial unquestionably would have degenerated into nothing more than a "name calling contest".

Exhibit 1

STATE OF MICHIGAN
IN THE COURT OF APPEALS

Appeal from Wayne County Circuit Court

No. 144-270, Judge Edward F. Bell

National Bank of Detroit,
a national banking association,
Plaintiff and Appellee,
v.
Jack Rose,
Defendant and Appellant,
Doris Wertheimer Rose, Ivan E. Barris, and
Steven N. Andrews,
Defendants and Appellees.

Court of Appeals No. 8866

STATEMENT OF FACTS

Unable to extort any money by the conclusion of the second successive divorce action brought against appellant, defendant Ivan E. Barris started a third divorce action on August 26, 1968. In a coercive maneuver pursuant to this extortion (disputed) he obtained, ex-parte, the following injunction:

> "It is Ordered that Jack Rose, defendant, his agents, servants, employees and attorneys, and those persons in active concert or participation with them who receive actual notice of this Injunction be restrained from:
>
> Selling, assigning, encumbering, canceling, giving away or in any other manner disposing of the property and assets of the parties, whether in their joint names

or in the name of the defendant individually, or in defendant's name with another person or persons.

It is Further Ordered that no bond is required herein, the parties hereto being husband and wife".

On October 6, 1969, appellant received advice from plaintiff that his commercial account had been charged in the full amount of its balance on October 3, 1969, pursuant to the above injunction. Plaintiff refused to honor appellant's check transferring his funds to another bank account of appellant's. Mr. Robert M. Surdam, President of plaintiff, advised appellant that plaintiff would honor no check of appellant's. He further stated that plaintiff's counsel had advised him that he could be sent to jail for contempt of court if he honored any check of appellant's. An invalid Judgment of Divorce was entered against appellant on October 22, 1969, in accordance with an agreement between defendant Ivan E. Barris and Trial Judge James S. Thorburn (disputed). The judgment was appealed. On October 24, 1969, plaintiff filed a Complaint for Interpleader and paid appellant's funds into the Wayne County Circuit Court. A temporary restraining order against defendants was entered that same day. Defendants Ivan E. Barris and Doris Rose filed a cross claim against appellant. On January 9, 1970, the temporary restraining order was made permanent. On January 13, 1970, Summary Judgment was entered in favor of cross-plaintiffs. Appeals of the Summary Judgment and the Judgment of Divorce were consolidated in this Court on January 30, 1970.

ARGUMENT

1. *Was the Wayne County Circuit Court the "Trial Court" Referred to in GCR 802.2 (2)? Appellant has no way of knowing.*

Effect of Filing Claim of Appeals

> When an appeal is taken while property is being held for conservation or management under the order or judgment of the trial court, such court shall retain jurisdiction over such property pending appeal unless a stay of proceedings has been had pursuant to Rule 808, or except as the Supreme Court or Court of Appeals shall otherwise order. (GCR 802.2 (2)).

When the Trial Court decided that the Wayne County Circuit Court was *not* the "trial court" referred to in GCR 802.2 (2) and entered Summary Judgment in favor of cross-plaintiffs, it forced appellant to appeal the Summary Judgment in order to equate the Wayne County Circuit Court with the "trial court" so that the Wayne County Circuit Court would acquire jurisdiction over the money. When the appeals of the Summary Judgment and the Judgment of Divorce were consolidated by this Court, it put the parties in exactly the same position they would have been in if the Trial Court had decided in the first place that the Wayne County Circuit Court *was* the "trial court" of GCR 802.2 (2). The only thing the decision accomplished was to make appellant $5,000 poorer and his attorney $5,000 richer. At that, appellant was lucky to have found a fine man like Harry Dell to represent him. Appellant congratulates the Michigan Judiciary on another job well done. Once again it has accomplished its objective of generating attorney fees.

2. *If the Answer to the First Question is "Yes" was the Summary Judgment in Favor of the Cross-Plaintiff's Justified?* Obviously not. If the Wayne County Circuit Court was obligated under GCR 802.2 (2) to retain jurisdiction over the money, then it was error to enter judgment in favor of cross-plaintiffs.

3. *If the Answer to the First Question is "No", was the Trial Court Justified in Releasing Plaintiff and Permanently Enjoining Appellant from Taking any Legal Action Against Plaintiff?* Granting for the sake of argument that plaintiff was justified in paying appellant's money into court, it selected the wrong court to pay the money into. Plaintiff should have deposited the money with the Oakland County Circuit Court, not the Wayne County Circuit Court. The Oakland County Circuit Court was the trial court in the divorce litigation. It had an obligation to retain jurisdiction over appellant's funds pending his appeal. The Wayne County Circuit Court, on the other hand, was obligated to turn the money over to appellant's adversaries. When plaintiff accepted appellant's deposit it accepted a responsibility to guard it and preserve it for the appellant—to give it the same care that appellant would have given his own funds. Plaintiff assumed a position of trust when it accepted the money. It became a trustee. It had a free choice of which court to deposit appellant's funds with—the Oakland County Circuit Court, or the Wayne County Circuit Court. Having the opportunity to deposit the money with a court which was obligated to hold the money in trust pending appeal, plaintiff voluntarily chose to hand appellant's money over to a court which was obligated in turn to hand the money over to appellant's adversaries. Was plaintiff discharging its duty to its depositor when it made its selection? It was not! It committed a serious breach of trust. And

the error committed by the Trial Court in releasing plaintiff and permanently enjoining appellant from taking any action against plaintiff is just as serious.

4. *Was Plaintiff Obligated to Return Appellant's Funds Upon his Demand before the Entry of the Judgment of Divorce on October 22, 1969?* Certainly. Plaintiff had no valid reason to retain appellant's funds before October 22, 1969. Appellant admits that plaintiff was notified of an injunction. But the injunction did not prohibit appellant from *transferring* his own funds from one of his bank accounts to another of *his* bank accounts. Appellant was enjoined from giving away or selling his property, but where was there any prohibition on his buying property? Appellant had every right to buy whatever he wanted to without violating the injunction. Appellant understands that it is common business practice to pay for purchased property by means of checks written on commercial accounts. Appellant does not believe that plaintiff was an agent of appellant or a person in active concert with him. But, in any case, plaintiff was not enjoined from doing anything which appellant himself was not enjoined from doing. How can plaintiff say that it was enjoined from paying appellant's money into his own bank account or from paying a seller of property purchased by appellant if appellant himself was not so enjoined. The injunction imposed no greater restraint on appellant's agents than it imposed on appellant himself. Mr. John E. S. Scott argued for plaintiff in the Trial Court on January 9, 1970, that plaintiff was restrained by statute, but he never identified the statute. And appellant has been unable to find any statute which is applicable.

The injunction was not the real reason for plaintiff's refusal to return appellant's funds to appellant. That was only a pretext—an excuse. The true reason for retaining appellant's funds was the "Code of the Bar". Amazing, is it not, that the most important principle of Michigan jurisprudence has not yet been reduced to writing? Appellant would now like to make his contribution to the law by setting down his fundamental rule—a rule which is determinative of the bulk of the decisions of the Michigan courts:

> Code of the Bar
>
> Every member of the Bar shall protect the fees of every other member, dictates of justice, statute law, constitutions, or oaths of office to the contrary notwithstanding.

Appellant cannot really blame plaintiff for betraying its trust. It was only acting on the instructions of its counsel. Plaintiff's attorneys knew that the greater portion of the money appellant deposited with plaintiff would end up in hands of their fraternity brothers if they could persuade their client to retain the money on one "phony", "trumped up" legal pretext or another. Appellant cannot even blame plaintiff's attorneys for instructing their client to betray its trust. They were only living up to the Code of the Bar. If they had refused to go along, they would have suffered a subtle but severe punishment in the hands of the State Bar. They would have been ostracized by the great fraternity for their failure to protect its members. They would suddenly have found the judges to be less "cooperative". They would have found themselves to be less "influential". They would have found it increasingly difficult to attract prestigious and wealthy clients like the plaintiff. In a sense even corrupt trial judges like Judge Thorburn are blameless. They know that their corruption is condoned by the Court of Appeals. Appellant can only blame this Rotten Court!

5. *Can Appellant Hope to Gain Anything by this Appeal?* What is the point of citing the law to lawless judges? It just humiliates appellant for him sincerely to present argument to judges who he knows are merely toying with him for the purpose of extortion. There is popular concern today about "organized crime". Appellant shares this concern. The organized crime he fears is in the courts —crime organized by the most dangerous association of them all—the State Bar of Michigan. Is there any essential difference between a gangster in the protection racket and a corrupt judge? The gangster says to his victim, "If you hire my protective association, I'll see that your house isn't bombed". The judge says, "If you hire my fraternity brother, I'll see that you don't go to jail". Frankly, the appellant would rather deal with the gangster than the judge. At least he would not have to endure the appalling hyprocisy of an extortionist who poses as a champion of justice—a crook in judicial robes. Appellant does not suggest that every judge on the Michigan Court of Appeals is corrupt. Appellant knows of at least one honest judge on this Court. Appellant's heart goes out to him. An honest man surrounded by crooks and racketeers—it's a tragedy!

Appellant would like to make a "sporting proposition" to this Court. Let this Court order appellant to show cause at an open hearing why he should not be held in contempt of court for his insulting, contemptuous, and disrespectful remarks. If at the hearing appellant fails to support his accusations, let this Court find him in contempt and sentence him to jail. (Here is something this Court does well.) But if, on the other hand, appellant is able to prove his accusations, let the accused judges resign from the bench, and let the truth be a defense against the contempt as it is again libel. Two things are essential to the proof of any allegation—evidence to support the allegation and a tribunal to submit the evidence to. Appellant has ample evidence to support his accusations. So far, however, despite numerous attempts he has been unable to find a tribunal to receive his evidence. This proposal, if accepted, would provide that tribunal. Despite his conviction, appellant sincerely hopes that the hearing would reveal his accusations to be untrue. In such event he would accept his punishment without a whimper and apologize to the judges accused. Appellant is curious to learn how this Court is going to avoid his proposal. Will it sweep the matter under the rug or just ignore it altogether?

RELIEF

Appellant asks this Court to order him to show cause at an open hearing why he should not be held in contempt of court for his insulting, contemptuous, and disrespectful remarks.

Disrespectfully submitted,

Jack Rose
23999 W. Ten Mile Rd., Suite A
Southfield, Michigan 48075

Dated: April 20, 1970

Exhibit II

OPINION OF THE COURT

SENGSTACK v. SENGSTACK

4 NY2d 502, 176 NYS2d 337, 151 NE2d 887, 71 ALR2d 1237

Desmond, J.

In this separation suit brought by wife against husband the wife moved for temporary alimony and counsel fees and the husband cross-moved to dismiss the complaint for lack of jurisdiction, back of standing to bring the action and failure to state a cause of action. Special Term made an order which denied defendant's motion, awarded plaintiff temporary alimony of $300 a week, directed the payment of a counsel fee, and appointed a special guardian to conduct an investigation into the facts and to report to the court his recommendations as to the appropriate course of action to be taken for the care and protection of plaintiff's rights and interests in the light of her mental condition. Finally, Special Term ordered that the fees of the special guardian and his disbursements, including the expenses of a trip to Minnesota or Indiana or both, should be paid by defendant as necessary litigation expenses of plaintiff.

On appeal, Appellate Division, First Department, affirmed by a divided vote, two Justices dissenting and voting to dismiss the complaint on the ground of plaintiff's incapacity to sue because of her mental condition. The Appellate Division then granted defendant leave to appeal to this court, certifying five questions which in effect ask us to decide whether defendant's cross motion for dismissal should have been granted on the ground of lack of capacity to sue or on the ground of lack of authority in plaintiff's attorneys to bring the action, and whether Special Term had power on this showing to appoint a special guardian for plaintiff and to direct that his fees and expenses be paid by defendant.

The answers to these certified questions will be governed by the effect of the allegation in the complaint that "At all times hereinafter mentioned, plaintiff was, and she still is, mentally ill and of unsound mind and psychotic and incompetent to manage her person or property or affairs" and by other references in the complaint to her mental condition. Those statements, ordinarily surprising ones to be made by plaintiff about herself, were, however, an essential part of the cause of action she sought to plead for a separation on the ground of failure to support her (See Goodale v. Lawrence, 88 NY 513, 520.) Plaintiff alleged that in February, 1952, after the parties had been married for about 12 years and while they were residing together in this State, she left the abode of defendant at a time when she was (and ever since has been) incapable of knowing the nature, quality and consequences of her acts in leaving defendant's home and failing to return there and that, therefore, her act in so leaving did not constitute an abandonment. The further allegations of the complaint are that at the time plaintiff left defendant, and ever since, defendant well knew of plaintiff's mental illness, that despite his large net income of about $100,000 a year he has neglected and refused to provide more than $200 per month for her support and maintenance which is far below, it is alleged, her needs for maintenance, support and medical treatment, and that since October, 1953 he has failed and refused to pay anything at all for her support, maintenance or treatment. It was found and undisputed below that plaintiff had been mentally ill for some time before she left her husband in February, 1952, and that in that month, accompanied by her son by a former marriage, she left

New York and lived with other relatives until December, 1952, when she went to Minneapolis where she has since been living with her son. During 1951 and 1952 plaintiff had undergone treatments in two New York hospitals and had been examined by several physicians who had reported to defendant that his wife was paranoiac and that she had been mentally ill for several years. After she left defendant, plaintiff was a patient for some months in a hospital in St. Paul where she was treated by a psychiatrist who gave it as his opinion that, according to the history given to him, plaintiff's life with her present husband is a principal cause of her mental illness. This physician's affidavit states also without dispute that defendant has failed to pay the physician's bill for services or the bills of the hospital in St. Paul.

Headnote 1

In 1953 a probate court in Minnesota, on an application signed by plaintiff alleging her incompetency, had appointed her son general guardian of her person and estate but it appears and is not disputed by defendant that this Minnesota order was made without hearing or testimony, and that it contained no finding of incompetency. Defendant at various points in his argument relies on this Minnesota order as a binding adjudication of incompetency sufficient to deprive plaintiff of legal capacity to sue. However, as we have said, the order was made ex parte without a hearing, contains no adjudication of mental incompetence and, more importantly, is not conclusive or binding on the New York courts since plaintiff was, as is in effect conceded here, a domiciliary of New York (see Matter of Curtiss, 134 App Div 547, 551, 119 NYS 556, 559, affirmed 197 NY 583, 91 NE 1111). In February, 1956 plaintiff petitioned the same Hennepin County Probate Court of Minnesota for an order "for Restoration to Capacity" but after hearings and testimony by psychiatrists and a finding that she continued to be mentally ill and incapable of managing her person and estate the Minnesota court denied the petition to terminate the guardianship. There was another prior legal proceeding between the parties which should be mentioned. In November, 1953, on the application of plaintiff's son, a guardian ad litem was appointed for her and that guardian ad litem brought for her an action in Supreme Court, New York County, against her husband for a separation and an accounting but later the appointment of the guardian ad litem was vacated and the suit dismissed on the apparent ground, among others, that since there had been no adjudication of incompetency the court had no power to appoint a guardian ad litem. Although that dismissal has no particular binding force here it is of some importance that defendant secured that dismissal on showing among other things that plaintiff was a New York resident and that, therefore, the Minnesota adjudication could not be recognized here. In other words, defendant in that earlier New York suit successfully urged that the suit could not be brought by plaintiff through a guardian ad litem because she had not been adjudged incompetent and so was not to be considered incompetent by the New York courts. In the present suit he is urging that she is in fact incompetent as she herself alleges and that, therefore she cannot bring the suit.

It is not necessary to canvass all the facts as to treatment of plaintiff by numerous psychiatrists and in various hospitals or as to the professional opinions as to her mental capacity. It is undisputed that defendant refused to pay these various bills of doctors and hospitals but he gave as his reason for such refusal that he had not been consulted about such matters, that he could not be obligated by arrangements made by his stepson and that he was willing to provide appropriate care if his wife would return to this State. The Special Term opinion here contains what amounts to a finding that defendant inexcusably refused to pay for his wife's needs and disregarded her welfare. We do not think that the bona fides of the husband's position in this respect has any direct bearing on the answering of the law questions proposed to us by the Appellate Division. However, as we shall show later, the husband's attitude and the view that the Special Term and presumably the Appellate Division majority took of it may have some bearing on the correctness of the lower courts' decision to permit this action to go forward with a special guardian protecting the plaintiff rather than to force proceedings to be taken here for the appointment of a committee for plaintiff.

Headnote 2

The law question of general importance is this: May a court entertain an action brought by a plaintiff who declares herself to be mentally incompetent? Support for an affirmative answer is found in section 236 of the Civil Practice Act which says, in part, that: "A party who is of full age may prosecute or defend a civil action in person or by attorney unless he has been judicially declared to be incompetent to manage his affairs". Both the First Department in the present case and the Second Department in Anonymous v. Anonymous, 3 AD2d 590, 162 NYS2d 984, 988, construed section 236 to mean what it says, that is, that "a person of unsound mind but not judicially declared incompetent may sue or be sued in the same manner as any ordinary member of the community" (3 AD2d 594, 162 NYS2d 988). This rule is not to be changed because plaintiff's incompetency is alleged by herself rather than being established otherwise. And it seems a reasonable rule. There is a method under Article 81 of the Civil Practice Act for officially establishing incompetency and unless and until that is done the courts should not have to decide case by case whether a particular party is of sufficient mentality to be a suitor or defendant. This same position appears to be taken by the courts of other jurisdictions.

Headnote 3

It does not mean that the courts shut their eyes to the special need of protection of a litigant actually incompetent but not yet judicially declared such. There is a duty on the courts to protect such litigants (Wurster v. Armfield,

Headnote 4

175 NY 256, 262, 67 NE 584, 585). We think that duty was performed by the court in this case when it appointed as plaintiff's special guardian ad litem a learned and conscientious lawyer and directed him to make an investigation and report to the court as to what steps should be taken to protect plaintiff's interests.

Headnote 5

It is easy to suggest that the court here should have insisted that a committee be appointed. However, since under section 207 of the Civil Practice Act there is no absolute legal bar against the prosecution of such a suit by plaintiff herself as an unadjudged incompetent the question as to how best to protect her interests was one of discretion for the lower courts.

Special Term, we hold, acted within its powers in appointing a special guardian. The argument against the existence of such power is a technical one. Defendant reads sections 207 and 208 of the Civil Practice Act as

Headnote 6

meaning that the Supreme Court may appoint a special guardian for an adjudged incompetent only, and he seeks confirmation of this in some language in Matter of Frank's Estate, 283 NY 106, 27 NE2d 801. We think the two sections reasonably read and in the light of common court experience mean that when a person appears to be incompetent or has been adjudged incompetent the court may appoint a special guardian even when there be a committee, providing that some special situation (such as conflict of interest between the party and the committee) seems to require it. As to Matter of Frank's Estate (supra), we were discussing there the power of a court to pay a special guardian's fee from the estate of a deceased alleged incompetent who had died while proceedings for the appointment of a committee were pending. Our actual holding in Frank was that the incompetency proceeding necessarily abated when the alleged incompetent died so that the court conducting the abortive incompetency proceeding never acquired jurisdiction of the property of the alleged incompetent (see 283 NY 110, 27 NE2d 802) and had no power to dispose of any of that property even to the extent of paying a fee to the special guardian. The language of the

Headnote 7

Frank opinion should be read in the light of the precise question that was there being answered.

Headnote 8

Another question certified to us by the Appellate Division asks us to say whether the attorneys appearing for plaintiff in this suit have authority to prosecute the action. From our holding that section 236 of the Civil Practice Act (supra) authorizes plaintiff as an unadjudged incompetent to sue, it necessarily follows that she is entitled to be represented by attorneys.

It seems incongruous that a self-declared incompetent person may be a suitor in the courts but the courts in this case have not closed their eyes to the fact that plaintiff is of unsound mind. Obeying the instructions of the order below the special guardian will investigate and report to the court as to what the situation is and as to what should be done to protect plaintiff. We must assume that the Supreme Court on receipt of that report will do what is necessary for her further protection.

Headnote 9

Headnote 10

The order appealed from should be affirmed, with costs, the first, second and fith questions certified should be answered in the negative, and the third and fourth questions certified in the affirmative.

Conway, Ch. J., and Dye, Fuld, Froessel, and Burke, JJ., concur with Desmond, J.

Van Voorhis, J., votes to reverse and to dismiss upon the dissenting opinion of Peck, P. J., and Botein, J., in the Appellate Division.

Order affirmed, etc.

APPENDIX C

STATE OF MICHIGAN
IN THE COURT OF APPEALS

Appeal from the Circuit Court for the County of Oakland
The Honorable James S. Thorburn presiding

Doris Rose,
Plaintiff-Appellee,
v.
Jack Rose,
Defendant-Appellant.
Court of Appeals No. 8562

Circuit Court Nos. 9276, 22744, 68-47753

MOTION FOR ORDER DISMISSING DEFENDANT-APPELLANT'S APPEAL FOR FAILURE TO COMPLY WITH COURT RULES OR, IN THE ALTERNATIVE, ORDER REQUIRING DEFENDANT-APPELLANT TO FILE COMPLETE RECORD AND GIVING PLAINTIFF-APPELLEE FORTY (40) DAYS TO FILE HER BRIEF FROM DATE OF SERVICE OF COMPLETE RECORD UPON HER COUNSEL

Now comes the plaintiff-appellee, Doris Rose, by her attorney, Ivan E. Barris, and hereby moves this Honorable Court for its order dismissing defendant-appellant's appeal for failure to comply with Court Rules or, in the alternative, for its order requiring defendant-appellant to file complete record and giving plaintiff-appellee forty (40) days to file her Brief from the date of service of complete record upon her counsel.

In support of this motion, the following is shown unto the Court:

1. That defendant-appellant, in pursuance of a claim of appeal, has raised the issue of whether the appointment of a Guardian ad litem was proper, but defendant-appellant has failed to comply with the provisions of Rule 812.3(1) of the Michigan General Court Rules, which requires him to file the transcript of the testimony and *hearings* (emphasis supplied).

2. That in order for the Court to intelligently decide one issue raised by the defendant-appellant in his Brief, the transcripts of all hearings in Case No. 68-47753 commenced in August of 1968, are necessary. (Plaintiff-appellee hereby waives her right to the transcription and filing of all pre-trial motions in the earlier cases, Oakland County Nos. 22744 and 9276.)

3. That counsel for plaintiff-appellee, in all candor has been required in earlier appeals taken to this Court by defendant-appellant to "supplement" the record and said counsel has no intention of continuing this practice.

4. That timely request and demand for all the pre-trial hearings has previously been made upon defendant-appellant as early as November 13, 1969, by counsel for plaintiff-appellee. (Not that any demand is really required.)

Wherefore, plaintiff-appellee prays for an order dismissing defendant-appellant's appeal for failure to comply with Court Rules, or, in the alternative, order requiring defendant-appellant to file complete record and giving plaintiff-appellee forty (40) days to file her Brief from the date of service of complete record upon her counsel.

Ivan E. Barris
Attorney for Plaintiff-Appellee
2066 Penobscot Building
Detroit, Michigan 48226

Dated: January 5, 1970.

State of Michigan,
County of Wayne—ss.

On the 5th day of January, 1970, before me, a notary public, in and for said County, personally appeared Ivan E. Barris, who did make oath that he read the foregoing motion by him subscribed and that he knows the contents thereof and that the same are true of his own knowledge, except as to those matters therein stated to be upon information and belief, and as to such matters he believes them to be true.

....

APPENDIX D

STATE OF MICHIGAN
IN THE SUPREME COURT

Appeal from the Michigan Court of Appeals

Judges Robert J. Danhof, Timothy C. Quinn and
Louis D. McGregor

National Bank of Detroit, a National Banking Association,
Plaintiff-Appellee,
v.
Jack Rose,
Defendant-Appellant,
Doris Wertheimer Rose, Ivan E. Barris, and
Steven N. Andrews,
Defendants-Appellees.
Wayne County Circuit Court Case #144270
Court of Appeals Case #8866

Doris Wertheimer Rose,
Plaintiff-Appellee,
v.
Jack Rose,
Defendant-Appellant,

Oakland County Circuit Court
Case Nos. 9276, 22744 and 68-47753
Court of Appeals Case #8562

Supreme Court Calendar Nos. 53044, 53045

APPLICATION FOR LEAVE TO APPEAL

Defendant-appellant, Jack Rose, applies to this Court for leave to appeal the order of the Court of Appeals entered July 17, 1970, dismissing appellant's appeals. Grounds for appeal are the following:

1) The subject matter of the appeal involves legal principles of mapor significance to the jurisprudence of the State.

2) The decision of the Court of Appeals is clearly erroneous and will cause material injustice.

Jack Rose,
23999 W. Ten Mile Rd.
Southfield, Michigan 48075
352-0952

Dated: September 18, 1970

CONCISE STATEMENT OF PROCEEDINGS AND FACTS

Judgment of divorce was entered against appellant on October 22, 1969 (Please see exhibit 2). The judgment was appealed to the Court of Appeals—appellant claiming it to, be invalid (Please see exhibits 1, 3 and 4). In an interpleader action arising from the judgment of divorce, National Bank of Detroit was discharged and appellant perpetually enjoined from bringing suit against the bank. This judgment was also appealed and later consolidated with the appeal of the judgment of divorce. While the appeal of the judgment of divorce was being perfected, a difference arose between the wife's counsel, Mr. Barris, and appellant over the question of which transcripts appellant was obligated by court rule 812 to provide (Please see exhibits 5, 6, 7 and 8). Both appeals were dismissed on July 17, 1970 for appellant's implied failure to comply with rule 812.2(a) (Please see exhibit 9). Rehearing of the order of dismissal was denied by the Court of Appeals on August 26, 1970 after it was notified that appellant had filed all the contested transcripts with the clerk of the trial court.

Jack Rose
23999 W. Ten Mile Rd.
Southfield, Michigan 48075
352-0952

Dated: September 18, 1970
State of Michigan,

County of Wayne—ss.

On September 18, 1970 before me a Notary Public, Wayne County, Michigan, acting in Oakland County, personally appeared Jack Rose who did swear that the foregoing statements are true of his own knowledge.

Betty J. Dennis,
Notary Public, Wayne County, Michigan.
Acting in Oakland County.
My commission expires March 26, 1974.

STATE OF MICHIGAN
IN THE SUPREME COURT

Appeal from the Michigan Court of Appeals

Judges Robert J. Danhof, Timothy C. Quinn and
Louis D. McGregor

National Bank of Detroit, a National Banking Association,
Plaintiff-Appellee,
v.
Jack Rose,
Defendant-Appellant,
Doris Wertheimer Rose, Ivan E. Barris, and
Steven N. Andrews,
Defendants-Appellees.

Wayne County Circuit Court
Case #144270
Court of Appeals Case #8866

Doris Wertheimer Rose,
Plaintiff-Appellee,
v.
Jack Rose,
Defendant-Appellant,

Oakland County Circuit Court
Case Nos. 9276, 22744 and 68-47753
Court of Appeals Case #8562

Supreme Court Calendar No.

APPELLANT'S BRIEF

IF AN APPELLEE MAKES A MOTION FOR AN ORDER REQUIRING APPELLANT TO PERFORM A CERTAIN ACT OR IN THE ALTERNATIVE AN ORDER DISMISSING APPELLANT'S APPEAL FOR HIS FAILURE TO PERFORM THE ACT, IT IS IMPROPER AND UNFAIR FOR THE APPELLATE COURT TO DISMISS THE APPEAL WITHOUT FIRST GIVING THE APPELLANT AN OPPORTUNITY TO PERFORM THE ACT. The same principle holds in a trial court substituting "defendant" for "appellee" and "plaintiff" for "appellant". Suppose, for example, that a defendant were to make a motion for a more definite statement or in the alternative for a dismissal for defective pleadings. Would it be proper for the trial court just to dismiss the complaint if it found that the pleadings were defective? Obviously not! It would have to afford the plaintiff an opportunity to correct the defect by filing a more definite statement. Surely a plaintiff must be able to learn from the court whether or not he is in violation of the court rules without fear of a dismissal if the court decides that he *is* in violation. The very function and purpose of the courts would be defeated if each case were to be decided at the first contested interpretation of a court rule. If a defendant could place a plaintiff in jeopardy of suffering a dismissal every time there was a disagreement over a court rule, then there would never be any disagreements at all. Every plaintiff would be intimidated into submission. The defendant's interpretation of the rule would have to be altogether ridiculous before the plaintiff would take a chance on contesting it. The motion for a more definite statement or in the alternative for a dismissal must be regarded as nothing more than an ordinary motion for a more definite statement. The alternative request for a dismissal must simply be disregarded by the court; it contributes nothing to the motion. As long as there is a genuine dispute over the meaning of the court rules, it is improper for the court to dismiss a complaint for failure to comply with the rules. Only after the court has adjudicated the contested interpretation of the rule and afforded the plaintiff an opportunity to comply may it dismiss for his failure to comply. The "sudden death" doctrine has never been accepted by the courts of this country.

The Court of Appeals' order of dismissal of July 17 refers to a "motion to dismiss the appeal". (Please see exhibit 9.) Appellant knows of no such motion. The only motion he is aware of is a motion dismiss *or in the alternative* to require appellant to file certain transcripts. Mr. Barris and appellant had a genuine dispute over the interpretation of GCR, 812. Mr. Barris brought the dispute to the attention of the Court of Appeals in his motion of January 5, 1970. Considerable argument was submitted to the Court of Appeals by both parties. (Please see exhibits 5, 6, 7 and 8.) Appellant expected that the Court of Appeals would either deny the motion or would order appellant to file certain transcripts. He would not have been surprised if the Court of Appeals had ordered a dismissal in the event that the contested transcripts were not furnished by a certain date. Nor would he have objected. He would have purchased the transcripts immediately upon an inkling that the Court of Appeals wanted him to. Even Mr. Barris in his brief of January 13, 1970 indicated that appellant should be required by court order to supply the contested transcripts before the appeal should be dismissed —"Realizing that this Court would be loath, at least in the first instance, to dismiss the appeal for failure on the part of the husband to comply with the Court Rules, counsel for wife requests, in the alternative, that an order be entered requiring the husband to cause the transcripts of all pre-trial hearings in Oakland Circuit Court cause No. 68-47753 to be forthwith ordered from the Court Reporter and filed with this Court and served upon counsel for the wife as soon as possible, giving to counsel's wife the forty (40) days to which she is entitled to file the appellee's Brief after being served with the transcripts of the pre-trial hearings (see Michigan General Court Rule 815.2(1))."

Appellant had no idea that the Court of Appeals would just dismiss his appeals without first resolving the disputed interpretation of rule 812 and providing appellant an opportunity to comply with the settled interpretation were it to be different than appellant's. It wasn't until July, 1970 that appellant got a glimmer of the idea that the Court of Appeals even considered Mr. Barris' motion of January 5 to be a motion for dismissal. Appellant wrote immediately to the Assistant Clerk of the Court of Appeals asking if that Court *did* regard the motion as a motion for dismissal and explaining that appellant would purchase the contested transcripts "without hesitation" if there were any risk of losing his right to appeal. The reply to appellant's letter of July 14 was the order of dismissal itself. (Please see exhibits 9 and 10.) It was as if the appellant himself had given the idea of a dismissal to the Court of Appeals in his letter of July 14.

EVEN IF THERE HAVE BEEN TECHNICAL IMPERFECTIONS IN THE APPEALS, THEY DO NOT JUSTIFY DISMISSALS. Appellant admits that he has not always complied strictly with the court rules. He does not fully understand them, nor has he yet met an attorney who does. For example, appellant included no "specific page references to the record" in his brief on appeal of case number 8562—either in his statement of facts or in his argument. (Please see exhibit 4.) These are specifically required in rules 813.2(1) and 813.3. Appellant did not intentionally violate these rules; he simply did not (and does not) understand how to comply with them.

Appellant made an honest mistake in the interpretation of the phrase "the full transcript of testimony and hearings had in the trial court" found in rule 812.2(a). But surely this is excusable. The same mistake was made by appellant's distinguished adversary, Mr. Barris—a renowned attorney and acknowledged expert in court rules. When Mr. Barris took an appeal of a judgment denying a divorce to his client (Court of Appeals case number 2237), he included in the record *only* the transcript of the trial. No transcripts of any the numerous pretrial hearings were ever served on appellant (appellee in that appeal). Neither was there any stipulation between the parties concerning these transcripts.

Appellant submits that his present predicament is exactly the sort of situation the Legislature was trying to prevent when it enacted Sec. 2331 of The Revised Judicature Act of 1961.

> Sec. 2331. No appeal shall be dismissed on account of any informality or imperfection in the bond, affidavit or other proceedings, for the taking of such appeal, if plaintiff shall either by amendment, or by furnishing a new bond, affidavit or other paper, supply the deficiency or defect.

Appeals are not to be dismissed for technical imperfections which are corrected immediately upon notice of them to the appellant. An appellate court can *always* find a technical defect in an appeal. If the phrase "appeal as of right" has any meaning at all, such technical defects cannot furnish a basis for dismissal. If an appellate court at its discretion can dismiss an appeal, then an "appeal as of right" becomes indistinguishable from an "appeal by leave". GCR, 13 expresses the same idea as the statute:

> Rule 13 Construction. These rules are to be construed to secure the just, speedy, and inexpensive determination of every action so as to avoid the consequences of any error or defect in the proceedings which does not affect the substantial rights of the parties.

COURT RULES ARE TO BE CONSTRUED SO AS TO AVOID DISMISSALS—NOT SO AS TO JUSTIFY THEM.

The order of dismissal was the first indication appellant had from the Court of Appeals that he had made the wrong interpretation of rule 812. On the same day that appellant received a copy of the order of dismissal he purchased all transcripts requested by Mr. Barris. In his Petition for Rehearing before the Court of Appeals appellant pointed out that he had purchased the transcripts. (Please see exhibits 11 and 12.) But it did not good; rehearing was denied.

Appellant has pursued these appeals diligently; he has tried to comply with the court rules and with the wishes of the Court of Appeals; he has performed sincerely and in good faith. Appellant is undeserving of these dismissals.

DESPITE THE IMPLICATION TO THE CONTRARY IN THE ORDER OF DISMISSAL OF JULY 17, 1970, APPELLANT *DID* CONFORM WITH RULE 812.2(a).

Let us assume *arguendo* that the phrase "the full transcript of testimony and hearings had in the trial court" includes in this case all hearings in the trial court identified with the case numbers 9276, 22744, or 68-47753. Then it is true as indicated in the order of dismissal of July 17 "that appellant failed to file the full transcript of hearings in the trial court, or in the alternative, to move in the trial court for an order that less than the full transcript be filed, pursuant to GCR 1963, 812.2(a)". However, the rule goes on to say that "The parties may *at any time* agree by stipulation that some portion less than the full transcript be transmitted, with like effect as the entry of an order by the trial court". (Emphasis added.) Appellant submits that he complied with this provision and hence was not in violation of rule 812.2(a).

Appellant admits that there was no *formal* stipulation between the parties, but there was a stipulation nonetheless. Mr. Barris requested only certain transcripts in his pleadings of January 13, 1970; he waived his right to transcripts of early proceedings. Appellant not only agreed to supply the requested transcripts, but he actually did supply them. What could be a more effective stipulation? A formal stipulation to supply certain transcripts would have been meaningless after the transcripts were in fact supplied. On the date of the Court of Appeals' order of denial of the application for rehearing—August 26—the parties had not only agreed that some portion less than the full transcript be provided; but the agreement was fully executed; appellant had actually filed every transcript required of him with the clerk of the trial court. Since the agreement can be made "at any time" and since the agreement was fully executed on August 26, it was error at that time to deny the application for rehearing because appellant had *not* failed to conform with rule 812.2(a).

It has always been appellant's position that he would supply any transcripts the Court of Appeals wanted him to supply, if it would only indicate to him—very informally—*which* transcripts it wanted him to supply. But even if that had not been his position—even if he had refused to supply any transcripts, he questions the propriety of a dismissal for failure to comply with rule 812.2(a). The Court has no way of knowing if a stipulation between the parties "at any time" in the future will eliminate an appellant's obligation to supply any transcripts at all.

IF MR. BARRIS' MOTION OF JANUARY 5, 1970, BE A MOTION TO DISMISS, IT WAS NOT TIMELY MADE AND SHOULD NOT HAVE BEEN GRANTED. Court rule 804.2 provides:

> No act on appeal shall be deemed insufficient unless motion to dismiss the appeal or to strike or correct the act be made within 15 days after service of notice of performance of such act.

Appellant caused to be filed with the Clerk of the trial court what appellant considered to be "the full transcript of testimony and hearings had in the trial court". Notice of performance of appellant's act of filing of the transcript was served on Mr. Barris on November 7, 1969. (Please see exhibit 13.) Since Mr. Barris made no motion to dismiss "within 15 days after service of notice of performance of such act", that act could not thereafter be deemed insufficient.

This argument is most offensive to appellant. He would like to think that the practice of law is something more than a game of tripping up one's opponent on obscure technicalities. He would prefer to speak of substantial rights rather than technicalities. The only reason appellant raises this technical defect is because his appeals are being dismissed on a technical defect.

IF MR. BARRIS' MOTION OF JANUARY 5, 1970 BE A MOTION TO DISMISS, IT IS ONLY A MOTION TO DISMISS THE APPEAL OF THE JUDGMENT OF DIVORCE (COURT OF APPEALS CASE NO. 8562) —NOT THE APPEAL OF THE INTERPLEADER (COURT OF APPEALS CASE NO. 8866). It is true that the two appeals were consolidated, but consolidation is not the same as merger. The parties being different in the two cases—the appeals cannot be merged. Consolidation notwithstanding, the appeals still retain their separate identities and case numbers. Even if they are decided simultaneously, they must be decided independently of one another. Mr. Barris' motion of January 5, 1970 bore the case number 8562 only. If there were any justification in dismissing that appeal, it would not apply to case number 8866.

IF MR. BARRIS' MOTION OF JANUARY 5, 1970 BE A MOTION TO DISMISS, THE COURT OF APPEALS' ORDER OF DISMISSAL OF JULY 17, 1970 COMES TOO LATE. Appellant does not suggest that the defense of laches may be invoked against a court. Still, all the elements of laches are here—the long delay in acting on the motion, and the consequential damage to appellant. Having no idea that his appeals might be dismissed, appellant went to a great deal of trouble and expense to perfect them. He spent approximately $1500 on transcripts and a fortune on a bond premium to bond the judgment of divorce. The subject matter of the litigation being so highly personal, it has been terribly embarrassing to appellant even to prepare pleadings. Has it all been for naught?

RELIEF

It is requested of this Court that the Court of Appeals' order of dismissal of July 17, 1970 be vacated so that the Court of Appeals may determine the substantial rights of the parties.

Jack Rose
23999 W. Ten Mile Rd.
Southfield, Michigan 48075
352-0952

Dated: September 18, 1970

State of Michigan,
County of Wayne—ss.

On September 18, 1970 before me a Notary Public of Wayne County, Michigan, Acting in Oakland County, personally appeared Jack Rose who did swear that the statements of fact in the foregoing Brief are true of his own knowledge.

Betty J. Dennis,
Notary Public, Wayne County, Michigan.
Acting in Oakland County.
My commission expires March 26, 1974.

EXHIBIT I

STATE OF MICHIGAN
In the Circuit Court for the County of Oakland

Doris Wertheimer Rose,
Plaintiff,
v.
Jack Rose,
Defendant.

Nos. 9276, 22744, 68-47753

ORDER APPOINTING GUARDIAN AD LITEM

At a session of said Court held in the Court House in Pontiac, Michigan, on April 23, 1963.

Present: The Honorable James S. Thorburn, Circuit Judge.

The plaintiff having filed a Petition for Appointment of Guardian Ad Litem for the Defendant, the Court on its own motion bringing on for hearing the subject matter of said guardian ad litem, oral argument having been heard, the Court being fully advised in the premises and being satisfied from a review of the files and records of this cause that the defendant is incompetent to properly represent himself in this particular cause;

Now, therefore,

It is hereby ordered that Fred N. Searl of 950 Union Bank Building, Grand Rapids, Michigan 49502, be, and hereby is, appointed Guardian Ad Litem of the defendant, Jack Rose, during the pendency of this cause, or until further order of this Court.

James S. Thorburn,
Circuit Judge.

Ivan E. Barris
Attorney for Plaintiff
2066 Penobscot Building
Detroit, Michigan 48226
WO 2-8210

EXHIBIT 2

STATE OF MICHIGAN

In the Circuit Court for the County of Oakland

Doris Wertheimer Rose,
v.
Jack Rose,
Defendant.

Nos. 9276, 22744, 68-47753

JUDGMENT OF DIVORCE

At a session of said Court held in the Court house in the City of Pontiac, County of Oakland, Michigan, on October 22, 1969.

Present: The Honorable James S. Thorburn, Circuit Judge.

The plaintiff having filed a Complaint for Absolute Divorce and two Supplemental Complaints for Absolute Divorce, the defendant having filed Answer thereto, testimony having been taken and the Court being of the opinion that the plaintiff has established that the defendant was guilty of acts of extreme and repeated cruelty and non-support;

Now, therefore, on motion of Ivan E. Barris, attorney for plaintiff;

Divorce

It is Hereby Ordered, and this Court, by virtue of the authority therein vested and pursuant to the statutes in such case made and provided, does order and adjudge that the marriage between the plaintiff Doris Wertheimer Rose and the defendant Jack Rose be dissolved, and a Judgment of Divorce is hereby awarded to Doris Wertheimer Rose, which said divorce shall be effective upon the entry of this Judgment of Divorce.

Alimony

It is Further Ordered and Adjudged that the plaintiff shall have no alimony and that alimony shall be forever barred.

Property Settlement

It is Further Ordered and Adjudged that the defendant shall pay forthwith and simultaneously with the entry of this Judgment of Divorce the sum of Six Hundred Fifty Thousand ($650,000.00) Dollars to the plaintiff.

It is Further Ordered and Adjudged that to implement the payment of the above-awarded sum of money all of the processes available for collection in an action at law, not limited to but including writs of garnishment, execution and attachment, shall issue as required; and to further implement the payment of the above-awarded sum of money the Court will continue in full force and effect the Injunction against the transfer, sale or alienation of assets by the defendant, and, accordingly, until further order of this Court the defendant shall be, and hereby is, enjoined and restrained from concealing, selling, assigning, transferring, conveying, surrendering, waiving, relinquishing, mortgaging, pledging, hypothecating, leasing, alienating, encumbering or granting options with respect to any of his business interests, real property, securities, stocks, options, safe deposit boxes, funds on deposit in brokerage accounts, savings accounts, commercial accounts, automobiles, or any of his other assets, real or personal, tangible or intangible, except in the usual course of business.

It is Further Ordered and Adjudged that this Court will keep jurisdiction of all property within its jurisdiction for a period of sixty (60) days in the event there is a request or petition by plaintiff for receivership, collection or application of assets or foreclosure of liens existing hereto on all assets of the defendant, it being further the order of this Court that there shall be a lien upon all assets of the defendant to guaranty and insure payment by him of the aforesaid Six Hundred Fifty Thousand ($650,000.00) Dollars to the plaintiff.

It is Further Ordered and Adjudged that each of the parties will keep as their sole and separate assets all of the tangible personal property now in his or her possession.

It is Further Ordered and Adjudged that other than hereinabove provided the plaintiff shall have no claim upon any assets or property of the defendant.

Statutory Insurance Clause

It is Further Ordered and Adjudged that any interest which either of the parties hereto may now have or may heretofore have had in any of the insurance contracts or policies of the other party shall be, and the same hereby is and are, extinguished, and the parties hereto shall in the future hold all such insurance free and clear of any right or interest which the other party now has or may heretofore have had therein or thereto by virtue of being the beneficiary, the contingent beneficiary or otherwise.

Dower

It is Further Ordered and Adjudged that the above division of property shall be in lieu of any claim and dower interest of any kind and nature that the plaintiff has had or will have against the property ever owned, now held or hereafter acquired by the defendant.

Attorney and Guardian Ad Litem Fees

It is Further Ordered and Adjudged that the defendant forthwith and simultaneously with the entry of this Judgment of Divorce shall pay to Ivan E. Barris, attorney for the plaintiff, an attorney fee in the sum of Eighty-Five Thousand ($85,000.00) Dollars.

It is Further Ordered and Adjudged that the defendant shall forthwith and simultaneously with the entry of this Judgment of Divorce pay to Steven N. Andrews, guardian ad litem, the sum of Twenty Thousand, One Hundred One and 20/100 ($20,101.20) Dollars as fees as guardian ad litem and as an attorney for the guardian ad litem, i.e., commonly called fees for extraordinary service.

It is Further Ordered and Adjudged that in order to insure and implement payment of the aforesaid Eighty-Five Thousand ($85,000.00) Dollar attorney fee to counsel for the plaintiff and the Twenty Thousand, One Hundred

One and 20/100 ($20,101.20) Dollar fee to the guardian ad litem, the Court, as aforesaid, will continue in effect the Injunction against the transfer, sale or alienation of assets, and will keep jurisdiction of all attorney and guardian fee matters within its jurisdiction for a period of sixty (60) days in the event there is a request or petition by plaintiff's counsel or the guardian ad litem for receivership, collection or application of assets or foreclosure of liens existing hereto on all assets of the defendant, it being further the order of this Court that counsel for the plaintiff and the guardian ad litem shall have a lien on all the assets of the defendant to guaranty payment of their respective fees.

James S. Thorburn,
Circuit Judge.

Ivan E. Barris
Attorney for Plaintiff
2066 Penobscot Building
Detroit, Michigan 48226
WO 2-8210

EXHIBIT 3

STATE OF MICHIGAN

In the Circuit Court for the County of Oakland

Doris Wertheimer Rose,
Plaintiff,
v.
Jack Rose,
Defendant.

Nos. 9276, 22744, 68-47753

ORDER WITHDRAWING NOMINATION OF FRED SEARL AS GUARDIAN AD LITEM, ORDER APPOINTING STEVEN N. ANDREWS AS GUARDIAN AD LITEM, AND ORDER DENYING PLAINTIFF'S MOTION TO WITHDRAW ORDER APPOINTING GUARDIAN AD LITEM

At a session of said court held in the Courthouse in the City of Pontiac, Michigan, on August 15, 1969.

Present: Honorable James S. Thorburn, Circuit Judge.

The plaintiff having filed a motion to withdraw an earlier order appointing a guardian ad litem for the defendant, the court being of the opinion that said order appointing a guardian ad litem should not be withdrawn, and the court being advised that the originally nominated guardian ad litem, Mr. Fred Searl, is unable because of health reasons to enter into his duties as guardian ad litem, and the court being of the opinion that a guardian ad litem should be appointed to protect the interests of the defendant and the court having decided to appoint one Steven N. Andrews as Guardian Ad Litem;

It is Hereby Ordered that the nomination of Fred Searl as Guardian Ad Litem for the defendant be and hereby is withdrawn;

It is Further Ordered that Steven N. Andrews be and hereby is appointed Guardian Ad Litem for the defendant;

It is Further Ordered that the plaintiff's motion to withdraw order appointing guardian ad litem for the defendant be and hereby is denied.

? ? ? ?
Circuit Judge.
For James S. Thorburn
Circuit Judge

Approved as to form only:

Ivan E. Barris
Attorney for Plaintiff
2066 Penobscot Building
Detroit, Michigan 48226
962-8210

Steven N. Andrews
Guardian Ad Litem for Defendant
14 E. Fourteen Mile Road
Clawson, Michigan 48017

EXHIBIT 4

STATE OF MICHIGAN
IN THE COURT OF APPEALS

Appeal from Oakland County Circuit Court

Nos. 09276, 22744 and 68-47753

Judge James S. Thorburn

Doris Rose, Plaintiff-Appellee
v.
Jack Rose, Defendant-Appellant.
Court of Appeals #8562

APPELLANT'S BRIEF

Statement of Facts

The parties were married an June 15, 1962 and lived together for 18 months. On April 13, 1964, plaintiff filed suit for separate maintenance. The suit was dismissed with prejudice by Judge James S. Thorburn on December 9, 1965. That same day plaintiff filed an action for divorce. The action was dismissed with prejudice by Judge Thorburn on April 29, 1966. An appeal was taken by the plaintiff to the Court of Appeals (#2237). The order of dismissal was affirmed on July 2, 1968. The instant case was filed on August 26, 1968.

Early in 1969, Judge Thorburn announced his intention to appoint a guardian ad litem over the defendant despite defendant's objections. On March 28, 1969, Judge Thorburn wrote the defendant advising him that he would name the guardian ad litem in court on April 23, 1969. Defendant sought leave to appeal to the Court of Appeals immediately. Leave to appeal was denied. On April 23, Judge Thorburn entered an Order Appointing Guardian Ad Litem. Again defendant sought leave to appeal to the Court of Appeals. Again leave to appeal was denied. No formal allegation was ever made that defendant was insane, mentally incompetent, or of unsound mind; nor was any insanity inquest ever held. The order of appointment itself only stated that the court was "satisfied from a review of the files and records of this cause that defendant is incompetent to properly represent himself in this particular cause". On August 15, 1969, Judge Thorburn ordered that Mr. Steven N. Andrews be substituted for Mr. Fred N. Searl as guardian ad litem "to protect the interests of the defendant".

Defendant petitioned the Trial Court for a stay of proceedings until it was decided who would represent the defendant. The petition was denied. The defendant wrote Mr. Andrews explaining that while the defendant had the righest regard for Mr. Andrews, he did not want him to be his guardian and explaining that the defendant could not cooperate with him in any way. The defendant requested Mr. Andrews to withdraw his acceptance of the guardianship. The request was denied.

After a trial date was assigned, the defendant made a motion to adjourn the trial, pointing out that he was not in a position to defend himself—not even in a position to file pleadings. The motion was denied. A Judgment of Divorce was entered after a proceeding referred to by Judge Thorburn as a "trial".

Argument

Defendant admits that he is incompetent to represent himself properly before Judge Thorburn. A litigant's competence to represent himself is measured by his ability to persuade the court. No litigant can persuade a court of anything once that court has decided that it will not be persuaded by the litigant. What does a litigant say to a court which declares that it will not hear the litigant? The defendant became incompetent to represent himself when Judge Thorburn announced that he was incompetent to represent himself. It was the announcement itself which rendered the defendant incompetent to represent himself. In any event, whether or not the "defendant is incompetent to properly represent himself in this particular cause", he has a constitutional *right* to represent himself.

> A suitor in any court of this State has the right to prosecute or defend his suit, either in his own proper person or by an attorney (Michigan Constitution of 1963, Art. I, Sec. 13).

Michigan Statutes clarify the constitution.

> Every person of full age and sound mind, may prosecute or defend civil actions in any court by an attorney, or may, at his election, prosecute or defend civil actions in person. No person shall be permitted to prosecute or defend any civil action in person, when he has an attorney in such case. (Revised Judicature Act of 1961, Sec. 1430.)

No judge in Michigan is authorized to appoint a guardian ad litem for a litigant of full age and sound mind over the litigant's objection, nor is the defendant aware of any case where such an appointment has been made. Self-representation is not merely a privilege, it is an absolute *right*. It cannot be denied upon the assertion that such a denial is "to protect the interests of the defendant". Heaven help us when a court can deny a defendant's constitutional rights any time it wants to merely by intoning the magic phrase, "to protect the interests of the defendant". Dictators and tyrants have always justified the usurpation of power by claiming to protect the interests of the very people whose individual rights they trample upon.

Within a few months after Judge Thorburn had appointed a guardian ad litem over the defendant "to protect the interests of the defendant" (from Judge Thorburn himself, ironically) he destroyed the one thing that the defendant was interested in protecting—his marriage. Was the guardian ad litem any less incompetent to protect the interests of the defendant than the defendant himself? What else would the defendant have lost if he had not had a guardian ad litem to protect his interests? His liberty? His life? What worse punishment would Judge Thorburn have inflicted upon the defendant were he allowed to exercise his constitutional right to defend his suit in person? To complete the irony Judge Thorburn has voiced *his* feeling that a divorce was in the best interests of the defendant.

The defendant sought the advice of attorneys after the appointment of a guardian ad litem. These attorneys were a a loss to explain the order of appointment; they had never seen such an order before. They agreed, however, that the defendant could not just ignore the order even if it be invalid. The defendant was advised that the control of his litigation had been taken from him—that he could recover control only by petitioning the Court of Appeals to vacate the order of appointment. Accordingly, the defendant attempted to appeal the order to the Court of Appeals and ceased defending himself in the Trial Court.

The order of appointment of a guardian ad litem was such an infringement upon the defendant's right to defend himself—such a deprivation of the defendant's capacity to protect his marriage—such a gross departure from the "settled procedure" demanded by due process as to render the judgment of Divorce invalid.

Relief Sought

It is requested of this Court that the Judgment of Divorce be declared void.

Respectfully yours,

Jack Rose
23999 W. Ten Mile Road
Southfield, Michigan 48075

EXHIBIT 5

STATE OF MICHIGAN
IN THE COURT OF APPEALS

Appeal from the Circuit Court for the County of Oakland

The Honorable James S. Thorburn presiding

Doris Rose,
Plaintiff-Appellee,
v.
Jack Rose,
Defendant-Appellant.

Court of Appeals No. 8562

Circuit Court Nos. 9276, 22744, 68-47753

MOTION FOR ORDER DISMISSING DEFENDANT-APPELLANT'S APPEAL FOR FAILURE TO COMPLY WITH COURT RULES OR, IN THE ALTERNATIVE, ORDER REQUIRING DEFENDANT-APPELLANT TO FILE COMPLETE RECORD AND GIVING PLAINTIFF-APPELLEE FORTY (40) DAYS TO FILE HER BRIEF FROM DATE OF SERVICE OF COMPLETE RECORD UPON HER COUNSEL

Now comes the plaintiff-appellee, Doris Rose, by her attorney, Ivan E. Barris, and hereby moves this Honorable Court for its order dismissing defendant-appellant's appeal for failure to comply with Court Rules or, in the alternative, for its order requiring defendant-appellant to file complete record and giving plaintiff-appellee forty (40) days to file her Brief from the date of service of complete record upon her counsel.

In support of this motion, the following is shown unto the Court:

1. That defendant-appellant, in pursuance of a claim of appeal, has raised the issue of whether the appointment of a Guardian ad Litem was proper, but defendant-appellant has failed to comply with the provisions of Rule 812.-3(1) of the Michigan General Court Rules, which requires him to file the transcript of the testimony and *hearings.* (Emphasis supplied.)

2. That in order for the Court to intelligently decide one issue raised by the defendant-appellant in his Brief, the transcripts of all hearings in Case No. 68-47753 commenced in August of 1968, are necessary. (Plaintiff-appellee hereby waives her right to the transcription and filing of all pre-trial motions in the earlier cases, Oakland County Nos. 22744 and 9276.)

3. That counsel for plaintiff-appellee, in all candor, has been required in earlier appeals taken to this Court by defendant-appellant to "supplement" the record and said counsel has no intention of continuing this practice.

4. That timely request and demand for all the pre-trial hearings has previously been made upon defendant-appellant as early as November 13, 1969, by counsel for plaintiff-appellee. (Not that any demand is really required.)

Wherefore, plaintiff-appellee prays for an order dismissing defendant-appellant's appeal for failure to comply with Court Rules or, in the alternative, order requiring defendant-appellant to file complete record and giving plaintiff-appellee forty (40) days to file her Brief from the date of service of complete record upon her counsel.

Ivan E. Barris
Attorney for Plaintiff-Appellee
2066 Penobscot Building
Detroit, Michigan 48226
WO 2-8210

Dated: January 5, 1970

State of Michigan,
County of Wayne—ss.

On the 5th day of January, 1970, before me, a notary public, in and for said county, personally appeared Ivan E. Barris, who did make oath that he read the foregoing motion by him subscribed and that he knows the contents thereof and that the same are true of his own knowledge, except as to those matters therein stated to be upon information and belief, and as to such matters he believes them to be true.

....

EXHIBIT 6

STATE OF MICHIGAN
IN THE COURT OF APPEALS

Appeal from Oakland County Circuit Court

Judge James S. Thorburn

Nos. 09276, 22744 and 68-47753

Court of Appeals #8562

Doris Rose,
Plaintiff-Appellee
v.
Jack Rose,
Defendant-Appellant.

ANSWER TO MOTION FOR ORDER DISMISSING DEFENDANT-APPELLANT'S APPEAL FOR FAILURE TO COMPLY WITH COURT RULES OR, IN THE ALTERNATIVE, ORDER REQUIRING DEFENDANT-APPELLANT TO FILE COMPLETE RECORD AND GIVING PLAINTIFF-APPELLEE FORTY (40) DAYS TO FILE HER BRIEF FROM DATE OF SERVICE OF COMPLETE RECORD UPON HER COUNSEL

Now comes the defendant and answers plaintiff's motion as follows:

1. Michigan General Court Rule 812.3 (1) does not require the appellant to file transcripts of hearings of matters irrelevant to the issues raised on appeal or involved in the judgment appealed from.

2. As explained in defendant's Reply to Answer to Motion for Immediate Consideration this Court already has everything it needs to decide the one issue raised by defendant in his brief—the Order Appointing Guardian Ad Litem (Exhibit 1 attached). This order is void on its face. The only relevant hearing would have been a sanity inquest. But there never was a sanity inquest. That is the point of defendant's appeal.

3. Defendant has no idea when plaintiff's counsel has ever been required to "supplement" the record in earlier appeals taken to this Court. Plaintiff's counsel himself never filed transcripts of pretrial hearings when he took an appeal of the last case (Oakland County Circuit Court No. 22744. Court of Appeals No. 2237).

4. Plaintiff's counsel has made timely request of something he is not entitled to.

Wherefore, defendant prays that we may get on with this appeal.

Jack Rose
23999 W. Ten Mile Road
Southfield, Michigan 48075
352-0952

Dated: January 13, 1970

State of Michigan,
County of Wayne—ss.

On the 13th day of January, 1970, before me, a notary public, in and for said County, personally appeared Jack Rose, who did make oath that he read the foregoing Answer by him subscribed and that he knows the contents thereof and that the same are true of his own knowledge.

Betty J. Dennis,
Notary Public, Wayne County, Michigan.
Acting in Oakland County.
My commission expires May 1, 1970.

EXHIBIT 7

STATE OF MICHIGAN
IN THE COURT OF APPEALS

Appeal from the Circut Court for the County of Oakland

The Honorable James S. Thorburn presiding

Court of Appeals No. 8562

Circuit Court Nos. 9276, 22744, 68-47753

Doris Rose,
Plaintiff-Appellee,
v.
Jack Rose,
Defendant-Appellant.

MEMORANDUM BRIEF IN SUPPORT OF MOTION FOR ORDER DISMISSING DEFENDANT-APPELLANT'S APPEAL FOR FAILURE TO COMPLY WITH COURT RULES OR, IN THE ALTERNATIVE, ORDER REQUIRING DEFENDANT-APPELLANT TO FILE COMPLETE RECORD AND GIVING PLAINTIFF-APPELLEE FORTY (40) DAYS TO FILE HER BRIEF FROM DATE OF SERVICE OF COMPLETE RECORD UPON HER COUNSEL

Plaintiff-appellant, hereinafter referred to as "wife", invokes the provisions of Michigan General Court Rule 817.5, which states that a Motion to Dismiss will lie for the reason, *inter alia* that "the appeal was not taken or pursued in conformity with the rules."

The predicate for this motion is the blatant failure on the part of the defendant-appellant, hereinafter referred to as "husband", to comply with the requirement of Michigan General Court Rule 812.2(b), which requires that the record on appeal include a "*full* transcript of testimony and hearings[1] had in the Trial Court", except that a portion thereof may be deleted by order of the Trial Court upon motion (not here filed) or by stipulation (not here executed).

The only issue raised on appeal by the husband is whether error was committed in appointing a Guardian ad Litem for him in the Trial Court proceedings. Many of the pre-trial hearings deal directly with the propriety of the entry of the order appointing a Guardian ad Litem and virtually every pre-trial hearing reflects the husband's eccentric and bizarre behavior which, along with other factors, impelled the Trial Court to the conclusion that he was incompetent to represent himself and thus needed a Guardian ad Litem.

Counsel for the wife cannot properly prepare her Brief without having access to the transcripts of all pre-trial hearings.[2] By the same token this Court cannot intelligently pass upon the issue raised on appeal without having available to it all the transcripts of the pre-trial proceedings. And, in any event, absent an order from the lower court and/or a stipulation deleting a portion of the transcript from the record, the wife is entitled to a full transcript of testimony and hearings.

---

[1] The husband has only filed the transcript of the trial itself and has failed to file or serve upon wife's counsel a transcript of any of the pre-trial proceedings or hearings, with the exception of a pre-trial hearing bearing upon the issue of whether Judge Thorburn should be disqualified.

[2] Said counsel does hereby waive his right to transcripts in the earlier proceedings in the Oakland Circuit Court and only requests transcripts of all pre-trial proceedings in the most recent case, being Oakland Circuit Court No. 68-47753.

Realizing that this Court would be loath, at least at the first instance, to dismiss the appeal for failure on the part of the husband to comply with the Court Rules, counsel for wife requests, in the alternative, that an order be entered requiring the husband to cause the transcripts of all pretrial hearings in Oakland Circuit Court cause No. 68-47753 to be forthwith ordered from the Court Reporter and filed with this Court and served upon counsel for the wife as soon as possible, giving to counsel's wife the forty (40) days to which she is entitled to file the appellee's Brief after being served with the transcripts of the pre-trial hearings (see Michigan General Court Rule 815.2 (1)).

Respectfully submitted,

Ivan E. Barris
Attorney for Plaintiff-Appellee
2066 Penobscot Building
Detroit, Michigan 48226
WO 2-8210

Dated: January 13, 1970

EXHIBIT 8

STATE OF MICHIGAN
IN THE COURT OF APPEALS

Appeal from Oakland County Circuit Court

Nos. 09276, 22744 and 68-47753

Judge James S. Thorburn

Court of Appeals #8562

Doris Rose,
Plaintiff-Appellee,
v.
Jack Rose,
Defendant-Appellant.

REPLY MEMORANDUM BRIEF IN SUPPORT OF MOTION FOR ORDER DISMISSING DEFENDANT-APPELLANT'S APPEAL FOR FAILURE TO COMPLY WITH COURT RULES OR, IN THE ALTERNATIVE, ORDER REQUIRING DEFENDANT-APPELLANT TO FILE COMPLETE RECORD AND GIVING PLAINTIFF-APPELLEE FORTY (40) DAYS TO FILE HER BRIEF FROM DATE OF SERVICE OF COMPLETE RECORD UPON HER COUNSEL

Defendant's arguments have already been presented in his Reply to Answer to Motion for Immediate Consideration, Supplementary Reply to Answer to Motion for Immediate Consideration, and Answer to Motion for Order Dismissing Defendant-Appellant's Appeal.

As defendant understands plaintiff's counsel, he intends to persuade this Court by means of the transcripts of pre-trial proceedings that it was defendant's "eccentric and bizarre behavior" which "impelled the Trial Court to the conclusion that he was incompetent to represent himself and thus needed a Guardian Ad Litem".

Defendant hopes that plaintiff's counsel is not going to waste this Court's time (and defendant's resources) trying to prove something that has already been admitted by defendant. The question of defendant's competency to represent himself is not at issue. Defendant in his brief has admitted that he was incompetent to represent himself. To eliminate all doubt about this admission and to obviate the filing of the transcripts requested, defendant files an affidavit acknowledging that he was incompetent to represent himself.

Respectfully submitted,

Jack Rose
23999 W. Ten Mile Rd.
Southfield, Michigan 48075
352-0952

Dated: January 15, 1970

STATE OF MICHIGAN
IN THE COURT OF APPEALS

Appeal from Oakland County Circuit Court

Nos. 09276, 22744 and 68-47753

Judge James S. Thorburn

Court of Appeals #8562

Doris Rose,
Plaintiff-Appellee
v.
Jack Rose,
Defendant-Appellant.

DEFENDANT'S AFFIDAVIT OF INCOMPETENCY TO REPRESENT HIMSELF

Jack Rose, being duly sworn deposes and acknowledges that he was incompetent to represent himself in Oakland County Circuit Court Case No. 68-47753.

Jack Rose
23999 W. Ten Mile Rd.
Southfield, Michigan 48075
352-0952

Dated: January 15, 1970

Sworn to before me a Notary Public this 15th day of January, 1970.

Betty J. Dennis,
Notary Public, Wayne County, Michigan.
Acting in Oakland County.
My commission expires May 1, 1970.

EXHIBIT 9

ORDER DISMISSING APPEALS

(Court of Appeals Nos. 8866 and 8562)

(L.C. Nos. 144270 and 68-47753)

At a session of the Court of Appeals of the State of Michigan, held at the Court of Appeals in the City of Lansing, on the 17th day of July in the year of our Lord one thousand nine hundred and seventy.

Present the Honorable Robert J. Danhof, Presiding Judge, Timothy C. Quinn, Louis D. McGregor, Judges.

In these causes a motion to dismiss the appeal is filed, and an answer in opposition thereto having been filed, and due consideration thereof having been had by the Court.

It is ordered that these appeals be, and they are hereby dismissed, for the reason that appellant failed to file the full transcript of hearings in the trial court, or in the alternative, to move in the trial court for an order that less than the full transcript be filed, pursuant to GCR 1963, 812.2(a).

It is further ordered that the stay of proceedings entered and the bond set by this Court on January 30, 1970, be and they are hereby set aside.

State of Michigan—ss.

I, Ronald L. Dzierbicki, Clerk of the Court of Appeals of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript and the whole of said original order.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court of Appeals at Lansing, this 20th day of July in the year of our Lord one thousand nine hundred and seventy.

Ronald L. Dzierbicki,
Clerk.

EXHIBIT 10

JACK ROSE
23999 W. Ten Mile Road
Suite A
Southfield, Michigan 48075

July 14, 1970

Mr. James O. Devereaux, Jr.
Assistant Clerk of the Court of Appeals
Prudden Building
Lansing, Michigan

Re: Court of Appeals Case Nos.
8562 and 8866

Dear Mr. Devereaux:

I am both puzzled and alarmed by your letters of July 9, 1970 to the Clerks of the Wayne and Oakland County Circuit Courts, copies of which you were kind enough to send me. You refer to a motion to dismiss. The only motion to dismiss pending before this court that I know of is the one Mr. Barris made on January 5, 1970, in Court of Appeals Case No. 8562. That motion requested in the alternative an order requiring me to file certain transcripts. Mr. Barris' motion arose out of the issue of which transcripts I was to file. Is this the motion to dismiss you refer to in your letters?

I have been going on the assumption that the Court of Appeals would grant me an opportunity to file any transcripts it deemed necessary before it would just dismiss my appeal. This is not an unwarranted assumption on my part is it? If there is any possibility that I could lose my right to appeal by waiting for a decision on the contested transcripts, would you please let me know. It would be a needless waste of my resources and a flagrant violation of GCR 1963, 13 to compel me to purchase these transcripts, but I will do so without hesitation at the risk of losing my right to appeal.

Thank you. I am sorry to trouble you.

Yours very truly,

Jack Rose

JR/bd
cc: Mr. Ivan E. Barris
2066 Penobscot Building
Detroit, Michigan 48226

EXHIBIT 11

STATE OF MICHIGAN

In the Circuit Court for the County of Oakland

No. 68-47753

Doris Wertheimer Rose,
Plaintiff-Appellee,
v.
Jack Rose,
Defendant-Appellant.

NOTICE OF FILING TRANSCRIPT

Please take notice that in accordance with the Rules of the Court of Appeals I have this day filed with the Clerk of this Court an original and three copies of a true, complete and correct transcript of proceedings had in the above-entitled cause on September 25, October 2, October 23 and November 13, 1968 in this cause before the Honorable James S. Thorburn, Circuit Judge, at Pontiac, Michigan; the balance of proceedings shall be filed as soon as possible.

Katherine M. Konzelman
Circuit Court Reporter

Dated: July 29, 1970

Copy to:

Clerk of Court of Appeals
300 Prudden Building
Lansing, Michigan

Ivan E. Barris
Louisell & Barris
2066 Penobscot Building
Detroit, Michigan

Jack Rose
23999 West Ten Mile Road
Southfield, Michigan

EXHIBIT 12

STATE OF MICHIGAN

In the Circuit Court for the County of Oakland

No. 47753

Doris Wertheimer Rose,
Plaintiff-Appellee,
v.
Jack Rose,
Appellant-Defendant.

NOTICE OF FILING TRANSCRIPT

Please take notice that in accordance with the Rules of the Court of Appeals I have this day filed with the Clerk of this court an original and three copies of a true, complete and correct transcript of proceedings had in the above cause on January 22 and 27, 1969, February 26, 1969, April 26, 1969, August 15 and 27, 1969, September 10, 1969, October 29, 1969, January 7, 1970, February 4, 1970 and May 6 and 20, 1970, before the Honorable James S. Thorburn, Circuit Judge, at Pontiac, Michigan.

Katherine M. Konzelman
Circuit Court Reporter

Dated: Pontiac, Michigan
August 14, 1970

Copy to:

Clerk of Court of Appeals
Prudden Building
Lansing, Michigan

Ivan E. Barris
Louisell & Barris
2066 Penobscot Building
Detroit, Michigan

Jack Rose
23999 West Ten Mile Road
Southfield, Michigan

EXHIBIT 13

STATE OF MICHIGAN

In the Circuit Court for the County of Oakland

Nos. 9276, 22744, 47753

Doris Wertheimer Rose,
Plaintiff,
v.
Jack Rose,
Defendant.

STENOGRAPHER'S CERTIFICATE AND NOTICE OF FILING

Please take notice that in accordance with the Rules of the Court of Appeals there has been filed with the Clerk of the Court an original and three copies of full and complete transcript of proceedings had and testimony taken in the above causes before the Honorable James S. Thorburn, Circuit Judge, at Pontiac, Michigan, consisting of two volumes, commencing September 25, 1969; payment therefor has been secured.

Katherine Konzelman, CSR
Circuit Court Reporter
Sixth Judicial Circuit

Dated: November 7, 1969
Pontiac, Michigan

Copy to:

Ronald L. Dzierbicki
Clerk of Court of Appeals
300 Prudden Building
Lansing, Michigan

Ivan E. Barris
Louisell & Barris
2066 Penobscot Building
Detroit, Michigan

Jack Rose
23999 Ten Mile Road
Southfield, Michigan

APPENDIX E

STATE OF MICHIGAN
In the Circuit Court for the County of Oakland
Nos. 9276, 22744, 68-47753

Doris Rose,
Plaintiff,
v.
Jack Rose,
Defendant,
and
National Bank of Detroit, a
National banking association,
Intervenor.

ORDER AUTHORIZING AND REQUIRING CLERK OF OAKLAND COUNTY TO DISBURSE CERTAIN FUNDS

At a regular session of said Court, held in the Court House Tower, Pontiac, Michigan, on February 17, 1971.

Present: The Honorable James S. Thorburn, Circuit Judge.

The National Bank of Detroit having petitioned to intervene herein and said Petition having been granted and having paid into the Clerk of Oakland County the sum of Six Hundred Thousand .... 00/100 Dollars .... ($600,000.00) in pursuance of a certain Letter of Credit, and the Plaintiff having filed a Petition for payment to her and to her counsel of said sums of money, and the Court being of the opinion that the Judgment of this Court entered October 22, 1969 is final and that the Plaintiff and her counsel, as their interests might appear, are entitled to the disbursement of the aforesaid sums in partial satisfaction of their respective claims as contained in the Judgment.

Now, therefore, on motion of Ivan E. Barris, attorney for the Plaintiff;

It is hereby ordered that the Clerk of Oakland County be and hereby is authorized and required to issue a check or to otherwise disburse the sum of Six Hundred Thousand .... 00/100 Dollars ($600,000.00), jointly, to Doris Wertheimer Rose and Ivan E. Barris, upon a presentation of either the original or a true copy of this Order and upon said Ivan E. Barris supplying said Clerk with a receipt in a form and manner satisfactory to the Clerk.

James S. Thorburn
Circuit Judge

State of Michigan,
County of Oakland—ss.

I, Lynn D. Allen, County Clerk for the County of Oakland, Clerk of the Circuit Court thereof, the same being a Court of record and having a Seal, do hereby certify that the foregoing is a copy of the record now remaining in my office.

In testimony whereof, I have hereunto set my hand and fixed the Seal of said Court this 17th day of February, 1971.

Lynn D. Allen
Clerk-Register of Deeds
Kathy Huber, Deputy Clerk

(Seal)

APPENDIX F

(State of Michigan—Supreme Court)

APPLICATION FOR LEAVE TO APPEAL

Defendant-appellant, Jack Rose, applies to this Court for leave to appeal the order of the Court of Appeals entered January 7, 1971 denying rehearing of its order of August 26, 1970 denying rehearing of its order of July 17, 1970 dismissing *inter alia* appellant's appeal of the Trial Court's Judgment of Divorce of October 22, 1969. Grounds for appeal are the following:

1) The subject matter of the appeal involves legal principles of major significance to the jurisprudence of the State.

2) The decision of the Court of Appeals is clearly erroneous and will cause material injustice.

Concise Statement of Proceedings and Facts

This Court's order of October 29, 1970 has denied appellant's application for leave to appeal Supreme Court case numbers 53044 and 53045 involving the same issues.

Jack Rose
23999 W. Ten Mile Rd.
Southfield, Michigan 48075
352-0952

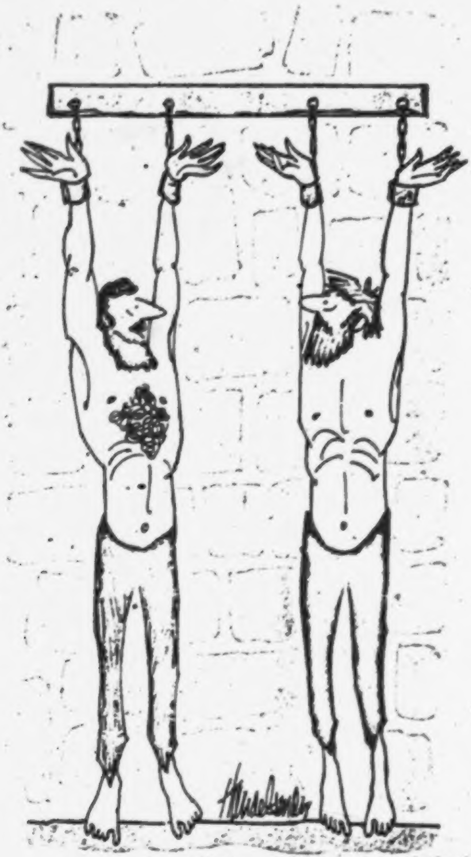
Dated: January 23, 1971

APPENDIX G

(State of Michigan—Supreme Court)

Brief

As already indicated in appellant's former appeals, officers of this State have deprived appellant of his liberty and property without due process of law.



guardian ad litem appointed
*"Same here—~~being kept under surveillance~~
for my own protection."*

Jack Rose
23999 W. Ten Mile Rd.
Southfield, Michigan 48075
352-0952

Dated: January 23, 1971

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Michigan General Court Rules of 1963:
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Canons of Professional Ethics of the American Bar Association. Canon 22 7

Canons of Judicial Ethics of the American Bar Association. Canon 17 12

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970
NO. 1834

JACK ROSE
Petitioner, Defendant and Appellant Below

vs.

DORIS ROSE
Respondent, Plaintiff and Appellee Below

BRIEF IN REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

*To the Honorable Chief Justice and Associate
Justices of the Supreme Court of the
United States:*

Petitioner respectfully prays that consideration be given to this brief addressed to arguments first raised in respondent's Brief in Opposition to Petition for Writ of Certiorari.

ARGUMENT

Mr. Barris' Brief in Opposition to Petition for Writ of Certiorari is fraught with factual "mistakes" as usual. Petitioner will pass these "mistakes" for the present and address himself to the three points raised in the Legal Argument.

I.

THE PETITION FOR WRIT OF CERTIORARI IS TIMELY AND THUS THIS HONORABLE COURT DOES HAVE JURISDICTION TO ENTERTAIN SAME.

When petitioner's application for rehearing was denied by the Court of Appeals (please see the Petition, Appendix H, p. 26), petitioner submitted another application for rehearing. Petitioner was not just being a "wise guy"; the second application for rehearing raised arguments that could not have been raised in the first application. The Clerk of the Court of Appeals refused to file the second application for rehearing, so petitioner applied for leave to appeal to the Michigan Supreme Court. Leave to appeal was denied on October 29, 1970, and so petitioner started to prepare a petition to this Honorable Court for writ of certiorari. While he was preparing this petition (within the 90 day period set forth in 28 U.S.C. Sec. 2101(c)), the Court of Appeals decided to accept petitioner's second application for rehearing. *Naturally, petitioner did not proceed with the petition for writ of certiorari—an application for rehearing was pending in the Court of Appeals.* Petitioner understood his counsel to say that he had to exhaust his state remedies before he could apply for relief to this Honorable Court.

Evidently Mr. Barris is confusing a denial of leave to appeal with an affirmation. Denial of leave to appeal or a dismissal by an appellate court does not constitute an adjudication on the merits of the appeal. Only an affirmation can do that. Dismissal in an appellate court is analogous to a dismissal *without* prejudice in a trial court. Affirmation in an appellate court is analogous to a dismissal *with* prejudice in a trial court. If the Michigan Supreme

Court had affirmed the Court of Appeals' order of dismissal, Mr. Barris' argument might have been well taken. But there was no affirmation. Denial of an application for leave to appeal puts the parties in the same position they would have been in if the application had never been filed. In the instant case it left the parties awaiting a decision from the Court of Appeals on petitioner's second application for rehearing. Denial of leave to appeal a judgment does not render that judgment final when an application for rehearing is pending in the court below.

To illustrate the folly of Mr. Barris' argument, suppose the Court of Appeals had entered an order granting petitioner's second application for rehearing. Would Mr. Barris then say that such an order must be set aside because the Michigan Supreme Court had already denied leave to appeal?

If Mr. Barris is implying that petitioner tried to mislead this Honorable Court when he 'conveniently "overlooked"' the Michigan Supreme Court order of October 29, 1970 (please see Brief in Opposition to Petition, p. 2) then petitioner resents the implication. Petitioner made no reference to the order because it was irrelevant.

II.

ALL FEDERAL QUESTIONS HAVE BEEN PROPERLY PRESERVED FOR REVIEW BY THIS HONORABLE COURT.

As Mr. Barris himself has demonstrated on page 67 of his Brief in Opposition to Petition for Writ of Certiorari, petitioner's application for leave to appeal to the Michigan Supreme Court incorporated his brief to the Court of Appeals. This brief to the Court of Appeals raised the same issues which petitioner now urges before this Honorable Court. Petitioner could not have pointed out with particularity to the Michigan Supreme Court the errors committed by the Court of Appeals in deciding the merits of the appeal because the Court of Appeals never decided anything concerning the merits of the appeal. What more could petitioner have done to preserve the issues?

III.

THE CONTENTION THAT THE PETITIONER WAS NOT AFFORDED DUE PROCESS WHERE HE WAS DENIED HIS CONSTITUTIONAL RIGHT TO DEFEND HIS SUIT IN HIS OWN PROPER PERSON IS NOT ONLY A FEDERAL QUESTION OF SUBSTANCE WITHIN THE PURVIEW OF RULE 19 OF THIS HONORABLE COURT, BUT IS ALSO HIGHLY MERITORIOUS.

It is true that petitioner was granted an opportunity to make a partial defense. But a *partial* defense is not a *full* defense. Due process guarantees a full defense. The bulk of petitioner's defense, had he been allowed to make it, would have been affirmative in nature. Judge Thorburn denied petitioner's request to raise affirmative defenses at the "trial" for the reason that they were never pleaded (please see the transcript of the "trial" commencing September 25, 1969, p. 375). Petitioner has no idea why his attorney-guardian failed to plead affirmative defenses, but petitioner himself was forbidden to plead them. Actually, petitioner was in the process of preparing such pleadings when his counsel pointed out to him that he was in no position to file them. Petitioner was advised that Sec. 1430 of the Revised Judicature Act (please see the Petition, p. 4) prohibited him from defending the action in person once an attorney was appointed and that court rule[1] prohibited him even from signing the pleadings. Petitioner found himself right in the middle of a triple-horn dilemma. If he signed the pleadings himself and filed them, Judge Thorburn would then proclaim loudly and piously that petitioner's "blatant and persistent refusal to comply with the rules" necessitated the appointment of an attorney-guardian. If petitioner asked his attorney-guardian to sign the pleadings, then Judge Thorburn would claim that petitioner had ratified his appointment of the attorney-guardian. If petitioner complied with the rules and filed no pleadings, then he risked being denied a full defense. Right up until the "trial" petitioner was trying to learn from Judge Thorburn who must sign the pleadings (please see Appendix R, p. 19). But Judge Thorburn wasn't talking. Petitioner decided to adhere strictly to the rules. He ceased defending himself in the trial court and mistakenly placed his trust in the Court of Appeals to vacate the order of appointment of the attorney-guardian. Even the partial defense made by petitioner was involuntary. He attended the "trial" only because he was ordered to attend (please see the transcript of the "trial" commencing September 25, 1969, p 12). Failure to attend would have resulted in another jail sentence.

It is bad enough that Judge Thorburn sets himself above the law. But what is even worse is his refusal to give advance notice of which laws he is going to violate. He waits until petitioner commits himself before deciding which rules he will ignore. Petitioner is helpless against this strategy of entrapment. This is the very reason for the "settled procedure" requirement of due process. Petitioner tried to point all this out to Judge Thorburn. The attempt cost petitioner another month in the Oakland County jail (please see Appendix S, p 20).

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[1] **GCR 114 Signing of Pleadings.**

.1 Signature. Every pleading of a party represented by an attorney shall be signed by at least 1 attorney of record in his individual name, whose business address shall be stated. A party who is not represented by an attorney shall sign his pleading and state his address. Except when otherwise specifically provided by rule, pleadings need not be verified or accompanied by affidavit.

Mr. Andrews' "defense" was less than worthless; it was actually prejudicial to petitioner's interests. This was not Mr. Andrews' fault. He did his best to do what he thought was best for petitioner. The problem was, of course, that he had no way of knowing what was best for petitioner.

Mr. Barris makes a poor analogy when he says that petitioner "had two bites at the litigation apple". It would be more accurate to say that petitioner had two pieces of rotten apple crammed down his throat. Furthermore, Mr. Barris is stealing petitioner's thunder. It was the petitioner who insisted that the respondent already "had two bites at the litigation apple" when he was called upon to defend the third successive divorce action brought against him.

True—petitioner has been unable to cite one case in support of his contention that he was denied due process of law. He doubts that there is one case in the annals of Anglo-American jurisprudence where a judge has appointed an attorney-guardian for a litigant of full age and sound mind over that litigant's objection. It is the very lack of cases which supports petitioner's contention.

Mr. Barris is intentionally confusing "incompetency" with "incompetency to represent oneself". Just plain "incompetency" is synonymous with "lunacy", "insanity", "mental disease", "mental incompetency", or "being of unsound mind". "Incompetency to represent oneself" means only that a person is unqualified to act as an attorney. Almost all laymen are incompetent to represent themselves. Would Mr. Barris say that almost all laymen are mentally incompetent? Even Judge Thorburn made a clear distinction when he said to petitioner on April 23, 1969. "The Court is of the opinion, first of all, that this is not a determination as to your lunacy or insanity or whether or not you are a victim of a mental disease. The issue is whether or not you are competent in this piece of litigation to represent yourself. The Court is of the opinion that you are not." Mr. Barris commits a serious breach of Canon 22 of the Canons of Professional Ethics of the American Bar Association[2] when he cites Michigan General

---

[2] Canon 22. Candor and Fairness.

The conduct of the lawyer before the Court and with other lawyers should be characterized by candor and fairness.

It is not candid or fair for the lawyer knowingly to misquote the contents of a paper, the testimony of a witness, the language or the argument of opposing counsel, or the language of a decision or a textbook; or with knowledge of its invalidity, to cite as authority a decision that has been overruled, or a statute that has been repealed; or in argument to assert as a fact that which has not been proved; or in those jurisdictions where a side has the opening and closing arguments to mislead his opponent by concealing or withholding positions in his opening argument upon which his side then intends to rely.

It is unprofessional and dishonorable to deal other than candidly with the facts in taking the statements of witnesses, in drawing affidavits and other documents, and in the presentation of causes.

A lawyer should not offer evidence which he knows the Court should reject, in order to get the same before the jury by argument for its admissibility, nor should he address to the Judge arguments upon any point not properly calling for determination by him. Neither should he introduce into an argument, addressed to the court, remarks or statements intended to influence the jury or bystanders.

These and all kindred practices are unprofessional and unworthy of an officer of the law charged, as is the lawyer, with the duty of aiding in the administration of justice.

Court Rule 201.5 and *Sengstack* v. *Sengstack* (please see Brief in Opposition to Petition, p. 13 and p. 35). Both the court rule and the decision are concerned with mental incompetency. They have no application whatsoever to a person who is merely incompetent to represent himself—and Mr. Barris knows it.

Having already received $85,000, Mr. Barris insists that the Petition raises no federal question of substance. How much more substantial would Mr. Barris find the issues to be were he paying out the money rather than receiving it?

PETITIONER CAN SEE NO REASON WHY THE MATTER OF THE FILING OF TRANSCRIPTS WITH THE CLERK OF THE TRIAL COURT SHOULD BE AN ISSUE IN THIS HONORABLE COURT. But just in case it is going to be an issue, petitioner appends to this Brief his Reply Brief (please see Appendix T, p. 25) in Support of Application for Leave to Appeal to the Michigan Supreme Court (please see Brief in Opposition to Petition, Appendices B and D, p. 16 and p. 46).

This entire matter would never have arisen were it not for Mr. Barris' stubborn and unreasonable demand for transcripts which he himself finally admitted he was not entitled to. It was not until his motion of January 5, 1970 (please see Brief in Opposition to Petition, Appendix C, p. 44) that Mr. Barris withdrew his unreasonable demand for transcripts of the earlier pretrial hearings. Petitioner could not have satisfied Mr. Barris' demand for the filing of transcripts *before* January 5, 1970, because Mr. Barris was still insisting on transcripts of *all* pretrial hearings. Nor could petitioner have satisfied Mr. Barris' demand for the filing of transcripts *after* January 5, 1970, because the time for filing of these transcripts had long expired.[3] Without a court order granting further time in advance the filing of the transcripts would have been invalid.[4] Mr. Barris' motion of January 5, 1970 requested just such an order from the Court of Appeals. What could petitioner have done but wait for the Court of Appeals to act on that motion. Even Mr. Barris' letter of November 13, 1969 (please see Brief in Opposition to Petition, p. 6), the first notice petitioner had of his alleged failure to comply with the court rules, was not sent until after it was already too late to comply. More entrapment! How unfair can a court be? Admittedly, petitioner can offer no reason why Michigan General Court Rule 812.3(1) should apply to this case; this appellant had *no* desire to transmit the contested transcripts as part of the record on appeal. But if the rule does not apply, then why was the appeal dismissed? The order of dismissal itself gives no clue (please see the Petition, Appendix G, p. 23).

---

[3] GCR 812.3 Duties of Stenographer re Transcript.

(1) An appellant desiring to transmit a transcript of testimony as part of the record on appeal, shall, within the time for taking an appeal, unless extended as provided in subrule 812.2, file same with the clerk of the trial court, or produce and file in the trial court a certificate from the stenographer of the trial court stating that a transcript of the testimony and hearings has been ordered, that payment therefor has been made or secured, and that the same will be furnished as soon as possible by said stenographer...

GCR 803 Time for Taking Appeal.

.1 Appeal as of Right. Appeal to the Court of Appeals as of right in civil cases, shall be taken not later than 20 days after the entry of the judgment or order appealed from, or within 20 days after the entry of an order denying a motion for a new trial or rehearing, provided such motion is made and served (a) within 20 days after the entry of the judgment or order appealed from, or (b) with such further time as may be allowed by the trial court during such 20 day period. ...

[4] GCR 804.2

Failure to Comply; Motion to Dismiss. For failure to properly and timely perform any act required on appeal by any rule, the appeal may be dismissed on motion by the Court of Appeals, or further time granted on terms. No act on appeal shall be deemed insufficient unless motion to dismiss the appeal or to strike or correct the act be made within 15 days after service of notice of performance of such act. No performance of an act on appeal after the time provided shall be deemed valid unless further time therefor has been granted in advance by the trial court, tribunal or officer; or by the Court of Appeals. No motion for further time shall be heard in the trial court or tribunal while a motion to dismiss is pending in the Court of Appeals.

IT IS THE HEIGHT OF IRONY THAT MR. BARRIS SHOULD COMPLAIN OF PETITIONER'S "BLATANT AND PERSISTENT REFUSAL TO COMPLY WITH THE RULES". Petitioner has never breached a single rule. He is in this predicament because of his strict insistence on living up to the rules. On the other hand, the instances of blatant and persistent refusal on the part of Mr. Barris and other members of the Michigan judiciary to comply with the rules are too numerous to mention individually in this brief. To illustrate this point petitioner selects just one court order and lists the violations committed by members of the Michigan judiciary in connection with its entry and appeal. The order selected is found in respondent's Brief in Opposition to Petition for Writ of Certiorari, Appendix E, page 89.

RULE VIOLATIONS IN CONNECTION WITH ORDER AUTHORIZING AND REQUIRING CLERK OF OAKLAND COUNTY TO DISBURSE CERTAIN FUNDS.

1) *Neither the motion for the order nor notice of hearing thereof was served on petitioner 4 days or more before the "hearing" on February 17, 1971.*

GCR 108.4.

Time for Service of Motions and Affidavits. A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than 4 days before the time specified for the hearing, unless a different period is fixed by these rules or for good cause shown, and in such latter event, authorization by the court shall be endorsed in writing on the face of the notice or by separate order. When a motion is supported by affidavit, the affidavit shall be served with the motion; and except as otherwise provided by these rules, opposing affidavits may be served not later than 1 day before the hearing, unless the court permits them to be served at some other time.

2) *No proof of service upon petitioner was filed on or before February 17, 1971.*

GCR 107.4.

Proof of Service. Except as otherwise provided by Rule 105 or 106, proof of service of all papers required or permitted to be served may be by written acknowledgment of service, by affidavit of the person making service, or by any other proof satisfactory to the court. Proof of such service shall be filed at or prior to the time of hearing.

3) *No praecipe was filed with the Assignment Clerk one week or more before February 17, 1971.*

Rules of the Circuit Court for the Sixth Judicial Circuit of Michigan. Rule 10.

Miscellaneous Calendar.

The forenoon of the first Wednesday of each term, and the forenoon of each Wednesday thereafter shall be motion days, and hearings on all motions and petitions shall be noticed for such days unless otherwise ordered by the Court. Any attorney de-

> siring to obtain a hearing of any pro confesso or default case, motion or miscellaneous matter, shall file a praecipe with the Assignment Clerk on or before the Wednesday preceding the Wednesday at which the same shall have been noticed. On Thursday of each week the Assignment Clerk shall, under the direction of the presiding judge, prepare a list of all such matters, showing the judge before whom the same will be heard, and shall cause a copy of such list to be published in the Pontiac-Oakland County Legal News in the issue preceding such hearing.

4) No praecipe having been filed, the motion for the order was not included on the "list of all such matters" prepared by the Assignment Clerk. Several weeks after February 17 petitioner asked Judge Thorburn's Clerk how he happened to call the motion for hearing in open court on that motion day — the matter not appearing on the Assignment Clerk's docket. He concluded that Judge Thorburn had told him to call the motion. There can only be one explanation for this. *There was ex parte communication between Judge Thorburn and Mr. Barris.*

> Canons of Judicial Ethics of the American Bar Association. Canon 17. Ex Parte Communications.
>
> A judge should not permit private interviews, arguments or communications designed to influence his judicial action, where interests to be affected thereby are not represented before him, except in cases where provision is made by law for *ex parte* application.
>
> While the conditions under which briefs of argument are to be received are largely matters of local rule or practice, he should not permit the contents of such brief presented to him to be concealed from

> opposing counsel. Ordinarily all communications of counsel to the judge intended or calculated to influence action should be made known to opposing counsel.

Mr. Barris accuses petitioner of bordering on paranoia (please see Brief in Opposition to Petition, p. 4, footnote 1). Paranoia is characterized by delusions of others plotting against the person afflicted behind his back. Is petitioner suffering from delusions or *did* Judge Thorburn and Mr. Barris plot against petitioner behind his back?

5) The record discloses that petitioner was not given notice of the motion for the order, that he did not appear voluntarily at the "hearing", that he was not afforded an opportunity to defend the motion, that the order is invalid for lack of due process.

The Oakland County Clerk disbursed the funds despite prior notice to him and Judge Thorburn of this lack of due process.

> U. S. Constitution. Amendment XIV, Sec. 1
>
> . . . nor shall any State deprive any person of life, liberty, or property, without due process of law, . . .

6) *The Oakland County Clerk disbursed the funds despite prior notice to him and Judge Thorburn that petitioner had filed a claim of appeal of the order.*

> GCR 802.2 Effect of Filing Claim of Appeal.
>
> (2) When an appeal is taken while property is being held for conservation or management under the order or judgment of the trial court, such court shall retain jurisdiction over such property pending appeal, unless a stay of proceedings has been had pursuant to Rule 808, or except as the Supreme Court or Court of Appeals shall otherwise order.

7) *Judge Thorburn, Mr. Barris, and the Oakland County Clerk participated in proceedings to enforce the judgment entered October 22, 1969 despite prior notice to them of Court of Appeals orders forbidding them to do so.*

> Excerpt from Court of Appeals Order of June 9, 1970.
>
> It is further ordered that the issuance of execution and any other or further proceedings to enforce the judgment entered October 22, 1969 be, and the same are hereby stayed.
>
> Excerpt from Court of Appeals Order of August 26, 1970.
>
> It is further ordered that this Court's order dated January 30, 1970 and modified on June 9, 1970 shall remain in full force and effect until the judgment of divorce is satisfied in toto as to the interest of Doris Wertheimer Rose and Ivan E. Barris. (Please see the Petition, Appendix H, p. 26)

8) On February 17, 1971 appeals of Oakland County Circuit Court case numbers 9276, 22744, and 68-47753 were pending in the Court of Appeals (Docket numbers 10460, 10461, and 10462). *The trial court was without jurisdiction even to entertain the motion for the order.*

> GCR 802 Manner and Effect of Taking Appeals.
>
> .1 Filing Claim of Appeal; Fees. Every appeal to the Court of Appeals shall be taken by filing a claim of appeal with the Court of Appeals and paying the entry fee required by subrule 822.3(1). A docket number shall thereupon be assigned to such appeal by the clerk of the Court of Appeals. See also subrule 803.5. The Court of Appeals shall thereupon have jurisdiction of the case. . . .

9) *On May 5 the Court of Appeals dismissed petitioner's appeal of the order without benefit of a stipulation or a motion.*

> GCR 802.1
>
> . . . No such appeal shall be dismissed except on stipulation, on special motion and notice, or by the Court of Appeals on its own motion, subject, however, to the provisions of Rule 809.

Nine violations arising from a single order. And these are only procedural violations having nothing to do with the merits of the motion for the order. How many more violations would an attorney have found? How many violations have there been in seven years of litigation committed not by petitioner but by members of the Michigan judiciary, who sanctimoniously and hypocritically accuse petitioner of the very offense they themselves are guilty of—"blatant and persistent refusal to comply with the rules"?

MR. BARRIS' ACCUSATION OF "EMOTIONAL INSTABILITY" COMES AS NO SURPRISE TO PETITIONER. That strategy is as old as mankind. A person who is defenseless against an accusation of wrongdoing accuses his accuser of lunacy. While petitioner denies that he is emotionally unstable, he will admit that he is emotionally involved in this litigation. He makes no apology for this. The relationship between man and wife is, after all, an emotional one. Petitioner cannot be dispassionate about his marriage. Indeed! If he were, Judge Thorburn would be the first to say that he was unfeeling and cruel.

Petitioner will also admit that he has become terribly embittered against the Michigan judiciary. All he could do was nurse his indignation as the Michigan courts toyed with him mercilessly for seven years just to keep him paying out attorney fees. To extort from a man is bad enough, but to extort from a man by using his desire and duty to protect his marriage as the coercive tool of that extortion—what could be a greater offense against decency and morality? Every time a judge orders, urges, or bribes respondent to divorce petitioner, he becomes more embittered. No judge has any right to do such a thing. No divorce — no attorney fees; it stinks! Every time a judge sends petitioner to jail without bothering to hear him or even to look at him, petitioner's resentment rises.

If Mr. Barris has filed his Brief in Opposition to Petition for Writ of Certiorari for the purpose of showing this Honorable Court how disrespectful and contemptuous petitioner is of the Michigan judiciary, he need not have troubled. Petitioner acknowledges with regret that he has lost his respect for many courts of Michigan. The sad truth is that in general we do not have courts of justice in Michigan — we only have corrupt benefit agencies for attorneys. Too many judges in this state, like Judge Thorburn, have no interest in dispensing justice; all they care about dispensing is attorney fees. Petitioner has been in business in Michigan for sixteen years. He has been exposed to a wide variety of graft and bribery. But he never knew the meaning of the term "corruption" until he was involved with the Michigan courts. It hurts petitioner to say this, but it is something that has to be said. Some attorneys in Michigan, such as Mr. Barris, take an active part in this corruption, engaging in bribery and kickbacks. Many attorneys are as appalled by the corruption as petitioner is, even though they are the beneficiaries of it. But no attorney will voice an objection. Petitioner would not even ask an attorney to "buck the machine"; it would surely spell the destruction of his career — of his very livelihood. As a result, this corruption becomes self-perpetuating. It can never be cured from within. The Michigan judiciary has become hermetically sealed in its own miasma. This pernicious condition will persist hopelessly forever unless some external treatment is applied. To that end petitioner implores this Honorable Court to provide a tribunal to receive his evidence of corruption in the Michigan Courts. Let petitioner prove that he is not just an irresponsible name-caller as Mr. Barris would have this Court believe. Petitioner was advised by counsel that the best way he could persuade this Honorable Court to *deny* his petition for writ of certiorari was to raise the matter of corruption in the Michigan Courts. Well, petitioner *does* want the subject judgment to be reviewed and declared invalid by this Honorable Court. But he wants more — he wants an honest judiciary in Michigan.

RELIEF

Petitioner begs this Honorable Court to provide a tribunal to sit at Detroit, Michigan for the purpose of receiving petitioner's evidence of corruption in the Michigan judiciary.

Dated: July 23, 1971.

Jack Rose
23999 West Ten Mile Road
Southfield, Michigan 48075

APPENDIX R

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

DORIS ROSE,
Plaintiff,
vs.
JACK ROSE,
Defendant.

No. 9276
22744
68-47753

MOTION FOR ADJOURNMENT

Now comes defendant and petitions this court for an adjournment of the trial scheduled on September 25, 1969. Defendant is unable to prepare a defense until he learns what accusations he has to defend against and who must sign the pleadings.

Jack Rose
6186 W. Outer Drive
Detroit, Michigan 48235
352-0952

Dated: September 16, 1969

APPENDIX S

HANDWRITTEN LETTER FROM PETITIONER TO TRIAL JUDGE

Feb. 7, 1971

James S. Thorburn
Oakland Co. Circuit Judge
Court Tower
Pontiac, Mich.

My dear Judge Thorburn:

I know that you will not be surprised to see that this letter comes from the Oakland Co. Jail. Surely you remember sentencing me here for 30 days on Wednesday, Feb. 3. I'm looking through the bars at the sunshine outside—fighting a losing battle against the resentment welling up within me. I hope one day that I may find it in my heart to forgive you for the terrible things you have done to me. But just now I'm so embittered against you, I doubt that I ever will. You have done to me what no man does to another; you have ruined my marriage; you have embarrassed and humiliated me; you have exposed me and my family to ridicule; you have simply ruined my life. And every time I try to put the pieces of it back together again, you come along and smash them apart by sending me to jail.

I still don't know what I did that could justify your citing me for contempt. I never wanted to enter your court room on Feb. 3 in the first place. But when the Court of Appeals refused to hear my appeal of your judgment of divorce on the merits, it threw the matter right back into your hands. I would have preferred to deal with some other tribunal, but I had no choice. I was directed back to you. When my case was called by your clerk, Mr. Davis, I approached the lectern to present my motion. But before I could even open my mouth, you rudely announced that you would not hear me and ordered me out of the court room forthwith. I was terribly embarrassed; I had acquaintances in the court room. The reason you gave for refusing to hear me was that the Court of Appeals and the Michigan Supreme Court had affirmed your judgment of divorce. I tried to point out to you that you were mistaken — that there had been no affirmation. The only thing these courts have decided in this case is not to decide anything at all. But you refused to listen. You had me removed from the court room for trying to explain to you why I should be heard. You wouldn't even hear me to refute your erroneous reason for not hearing me.

This is smilar to the events leading up to the judgment of divorce itself. I asserted my constitutional right to defend the suit in person. You insisted on appointing an attorney for me, Mr. Steven N. Andrews, above my strenuous objections for the alleged reason that I didn't know the legal rules. Mr. Andrews couldn't possibly defend me because I refused to cooperate with him. I couldn't cooperate with him for fear of ratifying his appointment. I couldn't defend myself in person because you had already appointed an attorney for me. You told me that you gave me every opportunity to defend myself in person, but you have evidently forgotten Sec. 1430 of the Revised Judicature Act of 1961 which prohibits litigants from defending themselves in person in any case where they have an attorney, I couldn't even file pleadings. If I had, you would have been the first to say, "Now, Now, Mr. Rose, we have to follow the rules. Your pleadings will have to be signed by Mr. Andrews." The result is that the suit wasn't defended at all. You entered judgment against me without granting me any opportunity to defend — the essential ingredient of due process. This was the basis of my motion of Feb. 3, to vacate the judgment of divorce.

You ordered me here to jail for 30 days without giving me any opportunity to explain to you why you should not send me here — another flagrant violation of the constitutional provision for due process. I realize that there is an exception to the right to be heard before the deprivation of one's liberty when a contemptuous act is committed in sight of the court *and the contemnor is cited and sentenced for contempt at that time.* In my case, however, I was *not* cited and sentenced at the time of the alleged contemptuous acts, but at a much later time. At that point there was no reason to deny me an opportunity to be heard in my defense. The right to due process being such a vital safeguard, the exception must be rigidly limited.

Last week I read a newspaper account of Michigan Supreme Court Justice Kavanagh's decision reversing you on a criminal contempt citation that had arisen during your recent tenure on the Oakland Co. one man grand jury. I understood the decision to say that a person accused of criminal contempt is entitled to a jury trial. You sentenced me for criminal contempt without a trial of any sort.

I realize, as a practical matter, that there is nothing I can do to gain my freedom. My attorney is locked up here in this cell along with me. In any case you have the *power* to keep me here. I have never questioned your power. You have a *duty* to release me from imprisonment, and in view of that duty I demand to be released immediately. In view of your power, however, I expect you to ignore your duty and to sentence me to another 30 days for writing this letter. Whatever punishment you inflict on me I will accept. I have no choice. I am powerless to take any legal action to escape your tyranny. All I can do is express my indignation.

I wonder how you would feel toward me if I did to you what you have done to me. How would you feel if I succeeded in persuading your wife to divorce you against your wishes by offering her a $650,000 inducement? How would you feel if I then insisted that you were to pay the $650,000 — that you yourself were to supply the money to be used to bribe your own wife to obtain a divorce that you didn't want? How would you feel if I then subjected you to torture until you paid the $650,000? How much torture would you endure before succumbing to the humiliation of paying the bribe? How much self-restraint would you exercise in talking to me? What would you do if I announced publicly that you were insane because you resisted me? I'm not trying to be personal. I only wanted to make a point. This is exactly what you have done to me.

With regard to your suggestion that I am insane I ask you either to make a public apology or to submit the question of my sanity to a jury. What on earth ever prompted you to say such a thing? Am I insane in your eyes for asserting my constitutional right to defend my suit in person? You may feel that I am foolish, but can you say that I am insane? If self-representation is prima facie evidence of insanity, that is all right with me. But then let Article I, Sec. 13 be stricken from the Michigan Constitution. I'm not trying to make any new rules; I only want to live up to the rules we already have. Perhaps you suggested that I am insane because I brought suit against you and Mr. Ivan E. Barris? Is any person insane who impugns your integrity? I'm sorry, Judge Thorburn, but I sincerely believe that you are dishonest. I would just be a hypocrite if I pretended that you were a man of honor.

Last summer after I had filed my complaint against you and Mr. Barris, I read Mr. Barris' reaction in both the Detroit News and the Detroit Free Press. He reportedly dared me to repeat the allegation in my complaint outside the court room. He said he would sue me for slander or libel if I did. I accept his challenge. I accuse you and Mr. Barris of conspiring to arrange costly litigation for the purpose of extorting attorney fees from me. I am sending copies of this letter to both newspapers. I invite you and Mr. Barris both to sue me for slander or libel. I am not looking forward to further involvement in still more litigation. My goal in life is simply to remove the court from it. But I am extremely anxious to submit this entire matter to a jury. I also hate to see my domestic life paraded before the public, but it seems impossible to avoid no matter what I do thanks to you.

Your litigant indignantly,
Jack Rose
Oakland Co. Jail
104 Wayne St.
Pontiac, Mich.

cc Michigan Court of Appeals
Michigan Supreme Court
Michigan Judicial Tenure Commission
State Bar of Michigan
The Detroit News
The Detroit Free Press

APPENDIX T

STATE OF MICHIGAN
IN THE SUPREME COURT
Appeal from The Michigan Court of Appeals
Judges Robert J. Danhof, Timothy C. Quinn and
Louis D. McGregor

NATIONAL BANK OF DETROIT, a National Banking Association, Plaintiff-Appellee, vs. JACK ROSE, Defendant-Appellant, DORIS WERTHEIMER ROSE, IVAN E. BARRIS, and STEVEN N. ANDREWS, Defendants-Appellees.	Supreme Court Case No. 53044

Wayne County Circuit Court
Case #144270
Court of Appeals Case #8866

DORIS WERTHEIMER ROSE, Plaintiff-Appellee, vs. JACK ROSE, Defendant-Appellant. Oakland County Circuit Court Case Nos. 9276, 22744 and 68-47753 Court of Appeals Case #8562	Supreme Court Case No. 53045

APPELLANT'S REPLY BRIEF IN SUPPORT OF APPLICATION FOR LEAVE TO APPEAL

"War of the Roses"—very amusing. A good pun, but a poor analogy. Where two men shoot at one another—that is a war. But where one man shoots at another, and that other only tries to escape—that is not a war; that is a hunt. (But then, who ever heard of the "Hunt of the Roses"?)

Many statements in Mr. Barris' Brief are inaccurate (as usual). But since they are also irrelevant, appellant makes no attempt to correct them with but a few exceptions.

Appellant could not believe his eyes when he read the second sentence of the Brief:

> "It is but a slight exaggeration to state that if Mr. Rose has his way the instant "War of the Roses" will span a period which, relatively speaking, will make the first War of the Roses appear to be only slightly longer than the so-called "Six Day War" fought in the Middle East in 1697."

Plaintiff brings three successive divorce actions against *defendant* over a period of six years. Then *plaintiff* blames *defendant* for the protracted litigation. Incredible! If Mr. Barris wants an end to the litigation, let him withdraw it. What does he expect from the appellant? Has appellant been "dilatory" and "litigious" because he has tried to escape Mr. Barris' bullets? Mr. Barris can end the "hunt" any time he wants to simply by putting down his gun. Appellant, on the other hand, can end the "hunt" only by receiving a bullet in the heart.

The statement beginning on the bottom of page 6 demands comment:

> "Both the Trial Court and the Court of Appeals, during

> some six years of litigation, have (and perhaps properly so) "bent backwards" for Mr. Rose, probably in recognition of the fact that Mr. Rose is a layman."

Both Courts have urged appellant's wife to divorce him. (Please see exhibits 14 and 15). If this is bending backwards for appellant, then he would be grateful if these Courts ceased bending backwards for him and started bending backwards instead for Mr. Barris. Appellant cannot help thinking of the popular adage, "With friends like these, who needs enemies?".

Appellant can see no point to the bulk of Mr. Barris' Brief other than to show This Court what a disrespectful, insolent, contemptuous, naughty boy appellant is. It is true that appellant has no respect for the Court of Appeals. He would like to have respect; he just doesn't. If a showing of respect for the Court of Appeals by an appellant is a condition precedent to the granting of relief by that court, then appellant is entitled to no relief. Despite what Mr. Barris would lead This Court to believe, however, appellant does not go out of his way to insult judges. This Court will observe that appellant's Application for Leave to Appeal, Concise Statement of Proceedings and Facts, Brief, and Exhibits are free of any remarks disrespectful to the judiciary.

Appellant did receive the letters reproduced on pages 5 and 6 of Mr. Barris' Brief. IT IS *NOT* TRUE, HOWEVER, THAT HE DISREGARDED THEM. Considerable discussion of Mr. Barris' right to the transcripts was had in various pleadings filed *before* Mr. Barris' motion of January 5, 1970. (Please see exhibits 16, 17 and 18). Ultimately Mr. Barris waived his right to transcripts of early proceedings. But this waiver was *not* executed *before* his motion of January 5. Discussion of the transcripts continued after January 5. (Please see exhibits 5, 6, 7, and 8.) Mr. Barris in his pleading of January 13, 1970 stated why he wanted the transcripts and what he hoped to prove from them. He said he intended to show that it was "the husband's eccentric and bizarre behavior which, along with other factors, impelled the Trial Court to the conclusion that he was incompetent to represent himself and thus needed a Guardian ad Litem". (Please see exhibit 7.)

On page 8 of his Brief Mr. Barris incredulously refers to appellant's affiidavit of incompetency to represent himself. Mr. Barris requested the transcripts in order to prove that appellant was incompetent to represent himself. Appellant obviated the need for these transcripts by admitting under oath that he was incompetent to represent himself. How much more sincere, forthright, and cooperative could appellant have been? Can Mr. Barris complain of appellant's failure to supply transcripts from which he hopes to prove a particular allegation after appellant admits that allegation? Having accepted the affidavit — having used the affidavit against appellant, Mr. Barris is estopped from asserting his right to the transcripts.

Perhaps it is presumptuous of appellant to speak of an estoppel. He admits that he knows next to nothing about the law. Perhaps appellant cannot always distinguish between the lawful and the unlawful, but he *can* distinguish between right and wong, between honesty and dishonesty, between sincerity and insincerity, between good faith and bad faith, between honor and dishonor. Appellant does not believe that Mr. Barris' conduct has been honorable. Does Mr. Barris think the affidavit was a gift from appellant? It was no gift! The affidavit was payment for Mr.

Barris' right to the transcripts. Can it be that Mr. Barris is still unaware of appellant's reason for making the admission? Appellant's pleading of January 15, 1970 accompanying his affidavit was perfectly clear — *"to obviate the filing of the transcripts requested,* defendant files an affidavit acknowledging that he was incompetent to represent himself." (Emphasis added. Please see exhibit 8.) Mr. Barris accepts payment for his interest in the transcripts, and then he refuses both to relinquish that interest and to return the purchase price. This conduct is no more honorable than that of a merchant who accepts payment for his goods and then refuses to deliver them. If Mr. Barris does not realize that this is wrong — morally wrong, then appellant feels terribly sorry for him.

To add insult to injury Mr. Barris, says on page 7 of his brief:

> "It is perhaps unfortunate for Mr. Rose that he "miscalculated" what would be the ultimate outcome of this failure to comply with the court rules, but such a miscalculation is scarcely a proper predicate for this Honorable Court "up turning" the order of the Court of Appeals."

Appellant did not miscalculate. He was misled by Mr. Barris. Appellant admits that he is easily misled — naive perhaps. But what is wrong with that? Does he have to be sophisticated to deal with the Court? Is the Court going to put appellant in a worse position for being naive, candid, and trusting then he would have been in if he were sophisticated, artful, and wary?

Mr. Barris' arguments pertaining to the merits of the appeal to the Court of Appeals, while irrelevant in his Brief to This Court, are, nevertheless, not totally unpersuasive. Who knows? — he might even prevail in the Court of Appeals with these arguments *if the appeals ever be heard there.*

RELIEF

Let the appeals to the Court of Appeals be heard on their merits.

Jack Rose
23999 W. Ten Mile Rd., Suite A
Southfield, Michigan 48075
352-0952

Dated: October 9, 1970

EXHIBIT 14

Piggins, Balmer, Grigsby, Skillman & Erickson
Attorneys and Counselors
David Stott Building
Detroit, Michigan 48226
Woodward 2-7840

June 10, 1965

Re: Rose vs. Rose

Mrs. Doris Rose
19775 Magnolia
Southfield, Michigan

Dear Doris:

The pretrial hearing this morning was adjourned to August. The Judge had to attend a meeting of all Oakland County Judges and he will be away for the month of July. *In the meanwhile he very pointedly asked me if you would not consider changing your Complaint from separate maintenance to divorce.* I promised him I would explore this matter thoroughly with you.

Should you agree to do so Mr. Buesser will, of course, promptly furnish me any and all further information I may desire regarding assets and we can reschedule the depositions of Mr. Rose. Should we proceed with his deposition we would probably have to hire appraisers to determine true market values of closed corporations. All this will entail not only a great deal of time but a sizeable expense for you. It would seem wiser that we first amend our Complaint to a divorce and then submit to them a proposal of settlement in order to see if we can reach an agreement without hiring appraisers, etc., in perparation for trial.

Please advise.

Very truly yours,
PIGGINS, BALMER, GRIGSBY,
SKILLMAN & ERICKSON
By: /s/ ROWE A. BALMER

(Emphasis added by Appellant)

EXHIBIT 15

At a session of the Court of Appeals of the State of Michigan, Held at the Court of Appeals in the City of Lansing, on the 3rd day of December in the year of our Lord one thousand nine hundred and sixty eight.

Present the Honorable
TIMOTHY C. QUINN
Presiding Judge
THOMAS GILES KAVANAGH
LOUIS D. McGREGOR
Judges

Jack Rose,
Defendant-Appellant
vs. No. 6558
Doris Wertheimer Rose,
Plaintiff-Appellee

In this cause defendant has filed an emergency application for leave to appeal, request for release on bond and a motion for immediate consideration. Plaintiff has filed answer thereto, and due consideration thereof having been had by the Court,

IT IS ORDERED that the application for leave to appeal be, and the same is hereby GRANTED.

Under the provisions of GCR 1963, 820.1(5) and (7), it is further ORDERED as follows:

1. Further consideration of the case in this Court is continued until the trial court conducts a hearing and takes testimony and determines the existence or non-existence of any premarital agreement between the parties hereto, and if such agreement is found to exist, the terms thereof. At the same hearing, the trial court shall take testimony

and determine the amount of temporary support and interim attorney fees to be awarded in this case.

2. *Plaintiff is ordered to renew her motion to amend the judgment in Rose* v. *Rose, a separate maintenance action in Oakland county circuit court so that judgment be without prejudice.*

3. Enforcement of the present order for temporary support and interim attorney fees is suspended and defendant is released from custody until the trial court has determined, after hearing, the existence or non-existence of any premarital agreement between the parties, and in the event such agreement exists, the terms thereof, and the amount of temporary support and interim attorney fees to be awarded in this case.

STATE OF MICHIGAN—ss.

I, Ronald L. Dzierbicki, Clerk of the Court of Appeals of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court of Appeals at Lansing, this 4th day of December in the year our Lord one thousand nine hundred and sixty-eight.

/s/ RONALD L. DZIERBICKI
Clerk

(Emphasis added by Appellant)

EXHIBIT 16

State of Michigan in the Court of Appeals
Appeal from the Circuit Court for the County of Oakland
The Honorable James S. Thorburn presiding

DORIS ROSE,
Plaintiff-Appellee,
vs.
JACK ROSE,
Defendant-Appellant.

Court of Appeals
No. 8562
Circuit Court
Nos. 9276
22744
68-47753

ANSWER TO MOTION FOR IMMEDIATE CONSIDERATION

Now comes plaintiff-appellee Doris Rose, by her attorney Ivan E. Barris, and for her answer to the Motion for Immediate Consideration states as follows:

1. That no grounds are stated in said Motion to warrant a deviation from the usual "time table" incident to the processing of appeals.

2. That if defendant-appellant or his family were really interested in making use of the so-called "half a million dollars", he need only file a Stay Bond in pursuance of Rule 808, MGCR.

3. That, in any event, the defendant-appellant's appeal has not been properly perfected because he has, to date, declined to either file a complete record or to serve a complete record upon counsel for plaintiff-appellee in that he has not even as yet ordered the transcripts of the numerous pretrial hearings, many of which either directly or in-

directly bear upon the propriety of the appointment of a guardian ad litem; that demand for said transcripts has previously been made and, except with respect to the transcript of one hearing, ignored; that a copy of a letter pertaining to the said subject matter previously sent to defendant-appellant is annexed hereto as Exhibit I.

4. That plaintiff-appellee cannot properly file a reply brief in this matter, nor could this Court properly comprehend or decide the one issue raised on appeal, without the transcripts of all pretrial motions being available.

WHEREFORE, plaintiff-appellee prays that the Motion for Immediate Consideration be denied.

IVAN E. BARRIS
Attorney for Plaintiff-Appellee
2066 Penobscot Building
Detroit, Michigan 48226
WO 2-8210

STATE OF MICHIGAN
COUNTY OF WAYNE
ss

On this 23d day of December, 1969 before me, a notary public, personally appeared Ivan E. Barris, who being first duly sworn, did depose and say that he has read the foregoing Answer by him subscribed and knows the contents thereof and that the same is true of his own knowledge except as to those matters therein stated to be upon information and belief, and as to such matters he believes them to be true.

DOLORES BARNHART
Notary Public Macomb County, Mich.
Acting in Wayne County,
My Commission Expires Feb. 1, 1971

EXHIBIT 17

State of Michigan in the Court of Appeals

Appeal from Oakland County Circuit Court
Nos. 09276, 22744 & 68-47753 Judge James S. Thorburn
DORIS ROSE, Plaintiff-Appellee
vs. Court of Appeals #8562
JACK ROSE, Defendant-Appellant.

REPLY TO ANSWER TO MOTION FOR IMMEDIATE CONSIDERATION

NOW COMES defendant and replies to plaintiff's Answer to Motion for Immediate Consideration.

1. Defendant *has* stated grounds in his motion to warrant a deviation from the usual "time table" incident to the processing of appeals.

2. It would impair more working capital to induce a surety to bond the judgment than the bond would free up.

3. Defendant has offered to supply transcripts of proceedings specifically requested by plaintiff's counsel (Exhibit 1 attached). But plaintiff's counsel has stubbornly and unreasonably insisted on transcripts of *all* proceedings. This litigation has been going on for nearly *six years.* The record of calendar entries (Exhibit 2 attached) discloses dozens of pre-"trial" proceedings, which took place on the following dates:

May 4, 1964
May 18, 1964
June 11, 1964
August 2, 1965
October 4, 1965
October 29, 1965
December 1, 1965
December 20, 1965
January 24, 1966
January 25, 1966
February 7, 1966
April 11, 1966

April 20, 1966
September 25, 1968
October 2, 1968
October 23, 1968
November 13, 1968
December 20, 1968
January 22, 1969
February 26, 1969
April 23, 1969
May 7, 1969
August 6, 1969
August 15, 1969
August 27, 1969

Of all these court proceedings only three had anything to do, directly or indirectly, with the appointment of the guardian ad litem — namely, those held on April 23, August 6, and August 15, 1969. Furthermore, *none* of the proceedings had any bearing whatsoever on the *propriety* of the appointment of a guardian ad litem.

4. To decide the issue of the propriety of the appointment of the guardian ad litem this Court need look no further than the four corners of the order of appointment itself. This order is void on its face; the reason stated in the order for the appointment of the guardian ad litem is no lawful justification for the appointment. Plaintiff's counsel will be unable properly to file a reply brief regardless of how many transcripts of pre-"trial" motions are available to him. Let plaintiff's counsel buy his own transcripts if he wants them. He can recover the payment if costs are awarded to the plaintiff by this Court. Whereas, if defendant is required to pay for additional transcripts he will have no way of recovering payment even if costs are awarded to him. The costs awarded defendant in the last appeal brought before this Court involving the same parties (#2237) still remain unpaid.

WHEREFORE, defendant again petitions this Court for immediate consideration without requiring defendant to furnish any further transcripts.

/s/ Jack Rose
23999 W. Ten Mile Road
Southfield, Michigan 48075

Dated: December 30, 1969

STATE OF MICHIGAN
COUNTY OF WAYNE

On this 30th day of December, 1969 before me, a notary public, personally appeared Jack Rose, who being first duly sworn, did depose and say that he has read the foregoing Answer by him subscribed and knows the contents thereof and that the same is true of his own knowledge.

/s/ BETTY J. DENNIS,
Notary Public
Wayne County, Michigan
Acting in Oakland County

My commission expires May 1, 1970

EXHIBIT 18

State of Michigan in the Court of Appeals

Appeal from Oakland County Circuit Court
Nos. 09276, 22744 & 68-47753 Judge James S. Thorburn

DORIS ROSE, Plaintiff-Appellee
vs. Court of Appeals #8562
JACK ROSE, Defendant-Appellant.

SUPPLEMENTARY REPLY TO PLAINTIFF'S ANSWER TO MOTION FOR IMMEDIATE CONSIDERATION

NOW COMES defendant upon receipt of plaintiff's counsel's letter of December 23 (Exhibit 3 attached) and makes further reply to plaintiff's Answer to Motion for Immediate Consideration. Defendant's alleged "bizarre" behavior is *irrelevant* to the issue raised by defendant on appeal. The only reason for the order of appointment of a guardian ad litem stated in the order itself is that "defendant is incompetent to properly represent himself in this particular cause". Defendant has admitted this allegation. The order makes no reference to defendant's alleged "bizarre" behavior. Even if defendant's behavior were considered "bizarre" it would not justify an appointment of a guardian ad litem without a finding that the defendant is of unsound mind. It is defendant's understanding that "the transcript of the testimony and hearings" of Court Rule 812.3(1) refers only to the trial of the issues involved in the judgment appealed from.

WHEREFORE, defendant again petitions this Court for immediate consideration without requiring defendant to furnish any further transcripts.

/s/ Jack Rose.
23999 W. Ten Mile Rd.
Southfield, Michigan 48075
352-0952

Dated: December 30, 1969

STATE OF MICHIGAN
COUNTY OF WAYNE

On this 30th day of December, 1969 before me, a notary public, personally appeared Jack Rose, who being first duly sworn, did depose and say that he has read the foregoing Answer by him subscribed and knows the contents thereof and that the same is true of his own knowledge.
My commission expires May 1, 1970

/s/ BETTY J. DENNIS,
Notary Public
Wayne County, Michigan
Acting in Oakland County